

October 27, 2009

TITLE 83: PUBLIC UTILITIES

CHAPTER I: ILLINOIS COMMERCE COMMISSION

SUBCHAPTER C: ELECTRIC UTILITIES

PART 412

OBLIGATIONS OF RETAIL ELECTRIC SUPPLIERS

SUBPART A: GENERAL

Section

412.10 Definitions

412.20 Waiver

SUBPART B: MARKETING PRACTICES

Section

412.100 Application of Subpart B

October 27, 2009

Liberty Power Comment:

412.110 Uniform Disclosure Requirements

~~412.440~~ 120 In-Person Marketing

~~412.420~~ 130 Telemarketing

~~412.430~~ 140 Inbound Enrollment Calls

~~412.440~~ 150 Direct Mail

~~412.450~~ 160 Online Marketing

~~412.460~~ 170 Training of Sales Agents

~~412.470~~ 180 Records Retention and Availability

412.110 In-Person Marketing

412.120 Telemarketing

412.130 Inbound Enrollment Calls

412.140 Direct Mail

412.150 Online Marketing

412.160 Training of Sales Agents

412.170 Records Retention and Availability

October 27, 2009

SUBPART C: RESCISSION, DEPOSITS, EARLY TERMINATION AND AUTOMATIC
RENEWAL OF CONTRACT

Section

412.200 Application of Subpart C

412.210 Rescission of Sales Contract

412.220 Deposits

412.230 Early Termination Fee

412.240 Contract Renewal

412.250 Assignment

SUBPART D: DISPUTE RESOLUTION AND CUSTOMER COMPLAINT REPORTS

Section

412.300 Application of Subpart D

412.310 Required RES Information

412.320 Dispute Resolution

412.330 Uniform Disclosure Requirements

October 27, 2009

Liberty Power Comment:

~~412.330 Uniform Disclosure Requirements~~

BlueStar Comment:

Proper Administrative Code for New Rulemaking

BlueStar has serious reservations about simply memorializing Staff's proposed rule in a new Illinois Administrative Code Part 412 ("Code 412"). A thorough evaluation of existing rules must take place to determine whether a proposed rule already exists and therefore is unnecessary or conflicts with an existing rule. If such a conflict exists, then the conflict should be readily identified with supporting explanation for the suggested amendment or elimination of the existing rule.

Staff should evaluate why DFNR does not belong in existing Illinois Administrative Codes, such as Part 410, deftly entitled Standards of Service for Electric Utilities and Alternative Retail Electric Suppliers. There are good reasons to incorporate the proposed rules into existing codes rather than the creation of a new section. For example, Code 410 includes several customer protections. In particular, Section 410.40 deals with Customer Complaints while Section 410.210 address Information to Customers.

Meanwhile, numerous other Codes contain additional rules that retail electric suppliers must follow. For example, existing Codes are already devoted to marketing aspects of retail electric supplier marketing practices. For example, Code 453 provides Internet Enrollment Rules that provide Letter of Agency requirements. This Code section also provides Additional Requirements for Electronic LOA, which includes the 3-day rescission period for Internet Enrollments. Similarly, Code 451 deals with the Certification of ARES as well as Procedures for Reporting and Continuing Compliance with Certification Requirements. Similarly, Code 454 deals with the Licensure of Retail Electric Agents, Brokers and

October 27, 2009

Consultants (“ABC”). This Code, among other things, presents ABC Code of Conduct requirements (454.90), Customer Records Information (454.110), Complaint Procedures (454.130), and Commission Oversight rules (454.140).

State and federal laws relating to the marketing of retail electricity should also be compatible with proposed rules. For example, the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505) should be consistent with proposed DFNR. Are the proposed Telephone Solicitation rules identical and/or compatible with the Telephone Solicitations Act, and, if identical, they would apply without incorporation in proposed rule. Similarly, how does Section 2N of the Consumer Fraud and Deceptive Business Act (which deals with non-English Language transactions) interplay with proposed rule? The DFNR also proposes environmental advertising rules that should be compatible with rules established by the Federal Trade Commission’s environmental marketing rules.

BlueStar is concerned that sufficient time has not been devoted to the evaluation of existing rules to determine whether an existing rule already exists, or worse yet, may conflict with the proposed rule without an explanation as to why the adopted rule is no longer valid. The Code references identified above are not an exhaustive list but rather illustrations of the type of review that must take place in this rulemaking. BlueStar appreciates other aspects of Part 410 may become part of the proposed rulemaking. However, as identified above, several codes already address applicable rules for retail electric suppliers and therefore simply putting the DFNR into a new code does not solve the problem. The recommendation to house the DFNR in a separate code was a new proposal aired at the last workshop, and as such, has not received adequate attention. Several codes should be evaluated to determine whether the new rule is an amendment to an existing code, a new rule or a changed rule and the consequences and/or advantages associated with housing the proposed rule in a new or existing code. This evaluation must occur sooner rather than later.

October 27, 2009

Questions Concerning Commission Legal Authority

The first step in developing or refining appropriate retail electric measures is to clarify the scope and applicability of the proposed administrative rules in light of existing statutory authority. BlueStar echoes ComEd and other RESs, Staff's June 2009 report to the Commission, General Assembly and Governor, as well as the comments reflected in the Commission's recent UCB/POR Order (at page 47) that question the Commission's authority to promulgate many of the rules contained in the DFNR. BlueStar reiterates its recommendation to assess the bounds of the Commission's authority as it relates to specific proposals in the DFNR so that further time and resources are not needlessly wasted.

October 27, 2009

SUBPART A: GENERAL

Section 412.10 Definitions

“Act” means the Public Utilities Act [220 ILCS 5].

AG Comment:

“Act” means the Public Utilities Act [220 ILCS 5 et seq.].

“Alternative retail electric supplier” or “ARES” means the same as that term is defined in Section 16-102 of the Act [220 ILCS 5/16-102].

“Commission” means the Illinois Commerce Commission.

“Complaint” means an objection made to an entity, by a customer or another entity, as to its charges, facilities or service, the disposal of which complaint requires investigation or analysis.

“Customer” means the same as “Retail Customer” as that term is defined in Section 16-102 of the Act [220 ILCS 5/16-102].

“Electric utility” means the same as that term is defined in Section 16-102 of the Act

October 27, 2009

[220 ILCS 5/16-102].

AG Comment:

"Fixed monthly charge" means a flat monthly rate that that does not change with the customer's usage and excludes utility delivery service charges.

"Fixed price" means the customer pays the same price per kWh for electricity each month times the amount of electricity used.

"Index price" means the customer can expect the price per kWh to change each month . The RES sets the monthly price per kWh based on one or more electricity benchmarks or published indexes.

"Residential customer" means a retail customer of an electric utility that receives (i) electric utility service for household purposes distributed to a dwelling of 2 or fewer units that is which receives delivery services of a utility billed under a residential rate or (ii) electric utility service for household purposes distributed to a dwelling unit or units that is billed under a residential rate and is registered by a separate meter for each dwelling unit.

"Retail customer" means the same as that term is defined in Section 16-102 of the Act [220 ILCS 5/16-102].

October 27, 2009

"Retail electric supplier" or "RES" includes both alternative retail electric suppliers and electric utilities serving or seeking to serve retail customers pursuant to Section 16-116 of the Act [220 ILCS 5/16-116].

AG Comment:

~~"Retail electric supplier" or "RES" includes both alternative retail electric suppliers and electric utilities serving or seeking to serve retail customers pursuant to Section 16-116 of the Act [220 ILCS 5/16-116].~~

"Retail Electric Supplier" or "RES" means an ARES or an electric utility providing electric power and energy to retail customers outside the utility's service area pursuant to Section 16-116 of the Act [220 ILCS 5/16-116].

"Sales agent" means a person engaged in selling power and energy service in Illinois, whether directly employed by the RES or otherwise exclusively selling the RES's service.

AG Comment:

~~"Sales agent" means a person engaged in selling power and energy service in Illinois, whether directly employed by the RES or otherwise exclusively selling the RES's service.~~

October 27, 2009

"Sales Agent" or "ABC" means agents, brokers, and consultants engaged in the procurement or sale of retail electricity supply for third parties and has the same meaning as defined in Section 16-115C(b) of the Public Utilities Act [220 ILCS 5/16-115C(b)].

"Small commercial customer" means those nonresidential customers of an electric utility consuming 15,000 kilowatt-hours or less of electricity annually in its service area. A RES may remove the customer from designation as a "small commercial customer" if the customer consumes more than 15,000 kilowatt-hours of electricity in any calendar year after becoming a customer of the RES. In determining whether a customer has consumed 15,000 kilowatt-hours of electricity or less during the previous year, usage by the same commercial customer shall be aggregated to include usage at the same premises even if measured by more than one meter, and to include usage at multiple premises. Nothing in this Part creates an affirmative obligation on an electric utility to monitor or inform customers or RESs as to a customer's status as a small commercial customer as that term is defined herein. Nothing in this Part relieves an electric utility from any obligation to provide information upon request to a customer, RES, the Commission, or others necessary to determine whether a customer meets the classification of small commercial customers as that term is defined herein.

AG Comment:

"Small commercial customer" means the same as that term is defined in Section 16-102 of the Act [220 ILCS 5/16-102]. ~~A RES may remove the customer from designation as a "small commercial customer" if the customer consumes more than 15,000 kilowatt-hours of electricity in any calendar year after becoming a customer of the RES. In determining whether a customer has consumed 15,000 kilowatt-hours of electricity or~~

October 27, 2009

~~less during the previous year, usage by the same commercial customer shall be aggregated to include usage at the same premises even if measured by more than one meter, and to include usage at multiple premises. Nothing in this Part creates an affirmative obligation on an electric utility to monitor or inform customers or RESs as to a customer's status as a small commercial customer as that term is defined herein. Nothing in this Part relieves an electric utility from any obligation to provide information upon request to a customer, RES, the Commission, or others necessary to determine whether a customer meets the classification of small commercial customers as that term is defined herein.~~

"Variable price" means the price per kWh may go up or down with market trends. But this type of offer may not be tied to a market index. For example it may be based on the average cost to purchase electricity by the RES.

ComEd Comment:

"Small commercial customer" means those nonresidential customers of an electric utility consuming 15,000 kilowatt-hours or less of electricity annually in its service area. A RES may remove the customer from designation as a "small commercial customer" if the customer consumes more than 15,000 kilowatt hours of electricity in any calendar year after becoming a customer of the RES. In determining whether a customer is a small commercial customer ~~has consumed 15,000 kilowatt-hours of electricity or less during the previous year,~~ usage by the same commercial customer ~~shall be aggregated to include~~ all kilowatt-hours consumed, usage including multiple meters at the same premises ~~even if measured by more than one meter,~~ and ~~to include~~ usage at multiple premises. Nothing in this Part creates an affirmative obligation on an electric utility to monitor or inform customers or RESs as to a customer's status as a small commercial customer as that term is defined herein.

October 27, 2009

Nothing in this Part relieves an electric utility from any obligation to provide billing and usage information upon authorized request to a customer, RES, the Commission, or others that may be necessary to determine whether a customer meets the classification of small commercial customers as ~~that term is~~ defined herein.

ComEd Comments:

[NOTE: ComEd suggests that additional definitions would be beneficial to the rule. At a minimum these additional definitions include:

“Do Not Market List” – two variants- utility and for RES

“Uniform Disclosure Requirements”/“Uniform Disclosure Statement” (“USD”)

“Direct Mail” – does this always include e-mail? Is a contract “direct mail” or is that only mass produced sales literature?

“Rescind” – clarify how this is different than a drop

“Telemarketing”

“inbound” and “outbound” calls

“Early termination fee”

“door to door marketing”/“in-person marketing”

“third-party verification”]

There continue to be terms within the document that require definitions to allow a single understanding of the use of the terms and to allow the document to clearly reflect the rules rather than describing terms. A more complete list is provided in the redline edits to the

October 27, 2009

DFNR, but a few of the most important include: the “Do Not Market List” - both the utility provided and the RES list, “Rescinds” – to clarify the purpose, and the “Uniform Disclosure” – which is used many times but is not treated consistently..

The services and products provided by RESs, that is power and energy supply services, are also not treated in a clear and consistent manner. In certain cases these are described as “services” and in others they are “products”, and others are a combination of descriptions.

Section 412.20 Waiver

The Commission, on application or petition of a RES or electric utility, may grant a temporary or permanent waiver from this Part, or any subsections contained in this Part, in individual cases where the Commission finds that: (a) the provision from which the waiver is granted is not statutorily mandated; (b) no party will be injured by the granting of the waiver; and (c) the rule from which the waiver is granted would, as applied to the particular case, be unreasonable or unnecessarily burdensome. The burden of proof in establishing a right to waiver shall be on the party seeking the waiver.

AG Comments:

~~Section 412.20 Waiver~~

~~The Commission, on application or petition of a RES or electric utility, may grant a temporary or permanent waiver from this Part, or any subsections contained in this Part, in individual cases where the Commission finds that: (a) the provision from which the waiver is granted is not statutorily mandated; (b) no party will be injured by the granting of the waiver;~~

October 27, 2009

~~and (c) the rule from which the waiver is granted would, as applied to the particular case, be unreasonable or unnecessarily burdensome. The burden of proof in establishing a right to waiver shall be on the party seeking the waiver.~~

ComEd Comments:

The Commission, on application or petition of a RES or electric utility, may grant a temporary or permanent waiver from this Part, or any subsections contained in this Part, in individual cases where the Commission finds that: (a) the provision from which the waiver is granted is not statutorily mandated **[NOTE: The purpose of subsection (a) is unclear. Either the ICC has authority to promulgate these rules or it does not, as the vast majority of this proposed rule is not expressly addressed in the PUA.]**; (b) ~~no party~~ consumers will be injured by the granting of the waiver; and (c) the rule from which the waiver is granted would, as applied to the particular case, be unreasonable or unnecessarily burdensome. The burden of proof in establishing a right to waiver shall be on the party seeking the waiver.

The provisions of §412.20 authorize a waiver to be granted for requirements of Part 412 that are "not statutorily mandated." It does not seem appropriate to include, up front, items within the rule that are legally unsupported. A better approach would be to include clear legal references, as noted in the recent workshop discussions (referenced above), than to leave this open to the briefs and subsequent legal challenges. Further, as indicated in ComEd's comments of September 25, 2009, it is critical that the ORMD workshop process be used to identify any legal concerns in order for such issues to be addressed in the appropriate forum.

October 27, 2009

CUB Comments:

~~Section 412.20 Waiver~~

~~The Commission, on application or petition of a RES or electric utility, may grant a temporary or permanent waiver from this Part, or any subsections contained in this Part, in individual cases where the Commission finds that: (a) the provision from which the waiver is granted is not statutorily mandated; (b) no party will be injured by the granting of the waiver; and (c) the rule from which the waiver is granted would, as applied to the particular case, be unreasonable or unnecessarily burdensome. The burden of proof in establishing a right to waiver shall be on the party seeking the waiver.~~

There is no need for a Waiver section in this document. There are no such waivers available to gas suppliers. Why should there be for electric suppliers?

October 27, 2009

SUBPART B: MARKETING PRACTICES

Section 412.100 Application of Subpart B

The provisions of this Subpart shall apply to retail electric suppliers serving or seeking to serve residential or small commercial customers with the following exceptions: Sections 412.160 a), b) and c) and 412.170 shall apply to retail electric suppliers serving or seeking to serve any customer class.

AG Comment:

~~SUBPART B: MARKETING PRACTICES~~

~~Section 412.100 Application of Subpart B~~

The provisions of ~~this Subpart~~ Section 412 shall apply to retail electric suppliers serving or seeking to serve residential or small commercial customers with the following exceptions: Sections 412.160 a), b) and c) and 412.170 shall apply to retail electric suppliers serving or seeking to serve any customer class.

Comment [KCM1]: Instead of specific reference to existing laws, can't we use a generic savings clause that says these provisions can't be read to excuse compliance with existing rules, regs, etc.?

Comment [KCM2]: Why separate the classes here? Those provisions should apply to both categories of sales: residential and small commercial.

ComEd Comment:

The provisions of this Subpart shall apply to ~~retail electric suppliers~~ RESs serving or seeking to serve residential or small commercial customers with the following exceptions: Sections 412.160 a), b) and c) and 412.170 shall apply to retail electric suppliers serving or seeking to serve any retail customer class. **[NOTE: this section is vague, making it difficult to follow]**

October 27, 2009

Liberty Power Comment:

Section 412.100 Application of Subpart B

The provisions of this Subpart shall apply to retail electric suppliers ~~serving or seeking to serve~~ in connection with the provision of service and marketing to residential or small commercial customers with the following exceptions: Sections 412.~~460-170~~ a), b) and c) and 412.~~470~~ 180 shall apply to retail electric suppliers in connection with the provision of service and marketing to ~~serving or seeking to serve~~ any customer class.

Comments:

Liberty Power recommends the proposed rule language be modified to clarify the ORMD's intent – to apply the rule to residential and small commercial customers with certain exceptions. In previous comments, Liberty Power explained how the current proposed rule language could potentially be interpreted to mean that the rules apply to all customer classes so long as the RES is “serving or seeking to serve residential and small commercial customers”. Using language found in consumer protection rules in Texas¹ as a model, Liberty Power suggests the following modified language in order to clarify the intent of the rule:

Other similar sections would also need to be modified in the same way, namely: Section 412.200 (Application of Subpart C) and Section 412.300 (Application of Subpart D).

Liberty Power Comment:

Section 412.110 Uniform Disclosure Requirements

October 27, 2009

In addition to providing the customer with a copy of the sales contract, a RES must disclose the following information to the customer prior to any enrollment for electric service, regardless of the form of marketing used. The written Uniform Disclosure statement must use a font of 12 point or larger and, if a separate document must not exceed two pages in length:

- a) The legal name of the RES;
- b) The RES's business address;
- c) The RES's toll free telephone number for billing questions, disputes, and complaints;
- d) The charges for the service for the length of the contract: if any charges are variable during the term of the contract, an explanation of how the variable charges are determined;
- e) The length of the agreement including the automatic renewal clause, if any;
- f) The presence or absence of early termination fees or penalties, and applicable amounts or the formula pursuant to which they are calculated;
- g) Any requirement to pay a deposit for power and energy service, the estimated amount of the deposit or basis on which it is calculated
- h) Any fees assessed by the RES to the applicant for switching to the RES;
- i) The name of the electric service offering for which the customer is being solicited;
- j) A statement that the customer may rescind the agreement within ten calendar days of the electric utility processing the enrollment request by calling either the RES or the electric utility and provide both phone numbers;

October 27, 2009

- ~~m~~ k) A statement that the customer will receive written notification from the electric utility confirming a switch of the customer's power and energy supplier;
- ~~n~~ l) If savings are guaranteed under certain circumstances, the RES must provide a written statement which includes a plain language description of the conditions that must be present in order for the savings to occur; and
- ~~o~~ m) If a product is being offered at a fixed monthly charge that does not change with the customer's usage and the fixed monthly charge does not include delivery service charges, it shall be disclosed to the customer that the fixed monthly charge is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the fixed monthly charge is not the total monthly amount for electric service.
- ~~l~~ n) A statement that the electric utility remains responsible for the delivery of power and energy to the customer's premise and will continue to respond to any service calls and emergencies;
- ~~k~~ o) A statement that the RES is an independent seller of power and energy service and that the RES is not representing or acting on behalf of the electric utility, governmental bodies, or consumer groups;

Section 412.110 In-Person Marketing

AG Comment:

SUBPART B: MARKETING

October 27, 2009

Section 412.110 Marketing and In-Person Marketing Enrollment Procedures

- a) A retail electric supplier and any RES sales agent shall clearly and conspicuously disclose the following information to all customers:
- 1) the prices, terms and conditions of the products and services being sold to the customer;
 - 2) the retail electric supplier's contact information, including the address, phone number and website address;
 - 3) contact information for the Illinois Commerce Commission including the toll-free number for customer complaints and website address;
 - 4) that the customer should consult the sales contract and/or contact the existing supplier to learn if any early termination fees are applicable; and
 - 5) all information contained in the Uniform Disclosure Statement, described in Section 412.330 of these rules.
- b) RES sales agents shall explain to the customer that any product and service offering is for the electricity supply charges only, and that it does not include delivery service charges, taxes and fees which may be charged monthly by the electric utility which will deliver the product and services purchased by the customer.
- c) RES sales agents shall provide the sales agent's name and, on request, the identification number if available.
- d) A retail electric supplier shall not submit or execute a change in a customer's selection of an electric supplier unless and until (i) all material terms and conditions of the offer, as contained in the Uniform Disclosure Statement, have been disclosed to the customer; (ii) the customer's express agreement has been obtained to accept the

October 27, 2009

offer after the material terms and conditions of the offer have been disclosed; and (iii) the customer's request has been confirmed through either a Letter of Authorization obtained from the customer or verification of the customer's request by a third party.

Comment [KCM3]: We need to define the "Letter of Authorization procedure." Elsewhere it's indicated that the UDS can be a part of the letter, so subpart e) needs to then be made consistent with whatever we decide the Letter can be.

e) The Letter of Authorization must contain the following information:

- 1) The customer's name;
- 2) Confirmation that the person completing the form wants to make the supplier change;
- 3) The customer's consent to the price of the service to be supplied and the material terms and conditions of the service being offered;
- 4) The service address affected by the supplier switch;
- 5) The electric utility account number;
- 6) The billing address if different from service address; and
- 7) The customer's electronic mail address.

If a customer's request is authorized by the customer signing a Letter of Authorization, the sales agent shall also require the customer to initial the Uniform Disclosure Statement, of which a copy must be left with the customer at the conclusion of a sales visit.

- f) Where the customer's request is verified by a third party, the third-party verifier must require the customer to verbally acknowledge that he or she understands the Uniform Disclosure Statement.
- g) If not provided at the point sale, such as in the case of a door-to-door solicitation, the Uniform Disclosure Statement and sales contract must be provided to the customer within three (3) business days of the electric utility confirmation of an accepted

October 27, 2009

enrollment.

- h) Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the sales agent, or where the customer or another third party informs the sales agent of this circumstance, the sales agent shall either find another sales representative for the RES who is fluent in the customer's language to continue the marketing activity in his/her stead, use an interpreter at the premise, or terminate the in-person contact with the customer. If any sales solicitation, agreement, Letter of Authorization, or Uniform Disclosure Statement is provided to a customer, all such documents provided must be provided to the customer in that language.
- i) The RES and any of its sales agents shall add the person's name to the RES's Do Not Market List upon that person's request.

Comment [KCM4]: This is an undefined term.

Section 412.110 In-Person Marketing

- a) Sales agents who engage in door-to-door marketing for the purpose of selling power and energy service offered by the RES shall produce identification as soon as possible and prior to describing any products or services offered by the RES. This identification shall be visible at all times and prominently display the following:
 - 1) The sales agent's full name in reasonable size type face;
 - 2) A photograph of the sales agent;
 - 3) The trade name and logo of the RES they are representing.

AG Comment:

October 27, 2009

Section 412.1420: In-Person Marketing

- a) RES sales agents who engage in door-to-door marketing for the purpose of selling a product or service ~~power and energy service offered by the RES~~ shall produce identification as soon as possible and prior to describing any products or services offered ~~by the RES~~. This identification shall be visible at all times and prominently display (i) the sales agent's full name in reasonable size type face; (ii) a photograph of the sales agent; and (iii) the trade name and logo of the RES they are representing.

Comment [KCM5]: How do we see compliance with this being monitored?

ComEd Comment:

Section 412.110 In-Person Marketing **[NOTE: need to define, term is not used below, what if marketing is done at a booth/kiosk/or other in-person methodology]**

- a) Sales agents who engage in door-to-door marketing **[NOTE: define]** for the purpose of selling power and energy supply service **[NOTE: throughout, the RES's power and energy supply service are described as "supply", "products" or other variants; their "products" under the rule require consistency]** offered by the RES shall produce identification ~~as soon as possible and~~ prior to describing any products or services offered by the RES. This identification shall be visible at all times and prominently display the following:

CUB Comment:

- a) Sales agents who engage in door-to-door marketing for the purpose of selling power and energy service offered by the RES shall produce display identification, ~~as soon as possible and prior to describing any products or services offered by the RES~~. This identification shall be visible at all times and prominently display the following:

October 27, 2009

Liberty Power Comment:

Section 412.440-120 In-Person Marketing

- a) Sales agents who engage in door-to-door marketing for the purpose of selling power and energy service offered by the RES shall produce identification as soon as possible and prior to describing any products or services offered by the RES. This identification shall be visible at all times and prominently display the following:

MidAmerican Comment:

- 3) The trade name and logo of the RES they are representing. .If the sales agent is a licensed ABC per Part 454, the sales agent's identification shall have the trade name and logo of the company of which they are employed. (ABCs can represent several RES')

- b) The sales agent shall leave the premises of a customer when requested to do so by the customer or the owner or occupant of the premises.

ComEd Comment:

- b) The sales agent shall leave the premises of a customer when requested to do so by the customer, ~~or~~ the owner, an occupant of the premises.
- c) If a customer elects to enroll with the RES, the RES shall ensure items (d) – (o) of the uniform disclosure requirements in Section 412.330 are orally disclosed to

October 27, 2009

the customer.

ComEd Comment:

c) If a customer elects to enroll with the RES, the RES shall ensure items (d)–(o) of the uniform disclosure requirements **[NOTE: This term is used inconsistently in the document with apparently the same meaning, it should be added to the definitions]** in Section 412.330 are orally disclosed to the customer.

ICEA Comment:

c) A RES shall ensure that during its sales presentation to the customer items (d) – (o) of the uniform disclosure requirements in Section 412.330 are orally covered with the customer. A RES may cover the items in any order it chooses so long as each relevant items is explained to the customer during the sales presentation.

Comment:

Presumably, the information supplied to the customer via the disclosure requirement is informative and useful to the customer *prior to* the customer's election to enroll. The current text, however, seems to allow for the possibility that a supplier could wait to disclose the information until after the customer elects to enroll. In addition, by tying the disclosure trigger to a customer's decision "to elect to enroll" the current text blurs the line between sales presentation and the process used to verify a customer's decision to switch suppliers. Accordingly, the proposed language makes clear that the disclosure is to occur during the sales presentation.

October 27, 2009

The second sentence in the proposed language makes clear that RES's do not have to cover the items in the order they are presented in Section 412.330. The word "relevant" is used to account for items (n) and (o) which deal with disclosure requirements (guaranteed savings and fixed monthly charge offers) which will not be applicable to all sales situations.

Liberty Power Comment:

c) If a customer elects to enroll with the RES, the RES shall ensure items (d) – (o) of the uniform disclosure requirements in Section 412.330 ~~are~~ 110 are orally disclosed to the customer.

MidAmerican Comment:

c) If a customer elects to enroll with the RES, the RES shall ensure items (d) – (o) of the uniform disclosure requirements in Section 412.330 are orally disclosed to the customer.

d) If a product is being offered at a fixed monthly charge that does not change with the customer's usage and the fixed monthly charge does not include delivery service charges, the sales agent shall explain to the customer that the fixed monthly charge is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the fixed monthly charge is not the total monthly amount for electric service.

Comment [arm6]: d) is already contained in Section 412.330 and repeating it here in the rule is redundant.

October 27, 2009

CUB Comment:

~~d) If a product is being offered at a fixed monthly charge that does not change with the customer's usage and the fixed monthly charge does not include delivery service charges, the sales agent shall explain to the customer that the fixed monthly charge is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the fixed monthly charge is not the total monthly amount for electric service.~~

It amazes me that the ORMD still continues to play with fire here. Prices from suppliers need to uniform and presented on a price per kWh. Especially in a UCB/POR environment, when any fixed bill price presented by a supplier would not include delivery charges, which generate from the utility.

MidAmerican Comment:

~~d) If a product is being offered at a fixed monthly charge that does not change with the customer's usage and the fixed monthly charge does not include delivery service charges, the sales agent shall explain to the customer that the fixed monthly charge is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the fixed monthly charge is not the total monthly amount for electric service.~~

- e) If a customer's enrollment is authorized by the customer signing a Letter of Authorization, the sales agent shall require the customer to initial the written uniform disclosure statement, of which a copy is to be left with the customer at

October 27, 2009

the conclusion of the sales visit. The uniform disclosure statement can be part of the first page of the sales contract, included in the Letter of Authorization, or a separate document. The minimum list of items to be included in the disclosure statement is contained in Section 412.330.

ComEd Comment:

e) If a customer's enrollment is authorized by the customer signing a Letter of Authorization, the sales agent shall require the customer to initial the written uniform disclosure statement, of which a copy is to be left with the customer at the conclusion of the sales visit. The uniform disclosure statement ~~can~~ may be part of the first page of the sales contract, included in the Letter of Authorization, or a separate document. The minimum list of items to be included in the disclosure statement is contained in Section 412.330. **[NOTE: use the defined term for UDS for clarity]**

ICEA Comment:

ICEA understands this language to mean that the RES would keep the copy with the original signature of the customer and that the customer would be left with an unsigned copy of the uniform disclosure statement. Is that the intent of the ORMD's language?

Liberty Power Comment:

e) If a customer's enrollment is authorized by the customer signing a Letter of Authorization, the sales agent shall require the customer to initial the written uniform disclosure statement, of which a copy is to be left with the customer at the conclusion of the sales visit. The uniform disclosure statement can be part of the first page of the

October 27, 2009

sales contract, included in the Letter of Authorization, or a separate document. The minimum list of items to be included in the disclosure statement is contained in Section 412.330 110.

- f) If a customer's enrollment is authorized by third-party verification during in-person marketing, the third-party verifier shall require the customer to verbally acknowledge that he or she understands the uniform disclosure statement, and that a copy of the uniform disclosure statement was left with the customer.

ComEd Comment:

- f) If a customer's enrollment is authorized by third-party verification **[NOTE: define; is this a telephonic verification?]** during in-person marketing, the third-party verifier shall require the customer to verbally acknowledge that he or she understands the uniform disclosure statement, and that a copy of the uniform disclosure statement was left with the customer.

CUB Comment:

- f) In the case of door to door marketing a customer's enrollment must be verified by third party verification. This may not take place while agent is at the door, but rather at a later date.

Liberty Power Comment:

- f) If a customer's enrollment is authorized by third-party verification during in-person

October 27, 2009

marketing, the third-party verifier shall require the customer to verbally acknowledge that he or she understands verification must contain items (d) – (n) of the uniform disclosure statement, and that a copy of the uniform disclosure was left with the customer.

- g) If the customer's enrollment is authorized on-line, the requirements of Section 412.150 shall apply.

ComEd Comment:

- g) If the customer's enrollment is authorized on-line, the requirements of Section 412.150 shall apply. **[NOTE: This is vague- 412.150 repeats many of the requirements listed in this section, are they to be duplicated?]**

Liberty Power Comments:

- g) If the customer's enrollment is authorized on-line, the requirements of Section 412.150-160 shall apply
- h) Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the sales agent in English or where the customer or another third party informs the sales agent of this circumstance, the sales agent shall either find another sales representative for the RES who is fluent in the customer's language to continue the marketing activity in his/her stead, use an interpreter at the premise, or terminate the in-person contact with the customer. When the use of an

October 27, 2009

interpreter is necessary, a form consistent with Section 2N of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2N] must be completed.

MidAmerican Comment:

h) Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the sales agent in English or where the customer or another third party informs the sales agent of this circumstance, the sales agent shall either find another sales representative for the RES who is fluent in the customer's language to continue the marketing activity in his/her stead, use an interpreter, or terminate the in-person contact with the customer. When the use of an interpreter is necessary, a form consistent with Section 2N of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2N] must be completed.

Comment [arm7]: To allow the use of Language Line as discussed at the last workshop

- i) The sales agent shall add the person's name to the RES's Do Not Market List upon that person's request.

ComEd Comment:

- i) The sales agent shall add the person's name to the RES's Do Not Market List
[NOTE: this is an undefined term, consider adding to definitions, or clarify that the RESs list is unique to each RES and there should be a specific section that requires the RES to maintain a do not market list and what that list means.] upon that person's request.

October 27, 2009

CUB Comment:

- i) The sales agent shall add the person's name to the utility's RES's Do Not Market List upon that person's request.

Section 412.120 Telemarketing

ComEd Comment:

Section 412.120 Telemarketing [NOTE: define]

Liberty Power Comment:

Section 412.420 130 Telemarketing

- a) In addition to complying with the Telephone Solicitations Act [815 ILCS 413], RES sales agents who contact customers by telephone for the purpose of selling power and energy service shall provide the sales agent's name and, on request, the identification number if available;

ComEd Comment:

- a) In addition to complying with the Telephone Solicitations Act [815 ILCS 413], RES sales agents who contact customers by telephone for the purpose of selling power and energy supply service shall provide the sales agent's name and, on request, the identification number if available;

October 27, 2009

MidAmerican Comment:

- a) In addition to complying with the Telephone Solicitations Act [815 ILCS 413], RES sales agents who contact customers by telephone for the purpose of selling power and energy service shall provide the legal name of the RES, the sales agent's name and, on request, the identification number if available;

- b) Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand a telephone solicitation in English, and the customer or another third party informs the RES sales agent of this circumstance, the sales agent must transfer the customer to a representative who speaks the customer's language, if such a representative is available, or terminate the call.

- c) If a customer elects to enroll with the RES, the RES sales agent must ensure items (d) – (o) of the uniform disclosure requirements are orally disclosed to the customer.

ComEd Comment:

- c) If a customer elects to enroll with the RES, the RES sales agent must ensure items (d) – (o) of the Uniform Disclosure Statement requirements **[NOTE: no further notations are indicated on this term]** are ~~orally~~ verbally disclosed to the customer.

ICEA Comment:

ICEA proposed text:

October 27, 2009

- c) A RES shall ensure that during its sales presentation to the customer items (d) – (o) of the uniform disclosure requirements in Section 412.330 are orally covered with the customer. A RES may cover the items in any order it chooses so long as each relevant items is explained to the customer during the sales presentation.

Comment:

Same as that expressed for Section 412.110(c) above.

Liberty Power Comment:

Liberty Power appreciates that after careful consideration, the requirement to *read* the Uniform Disclosure Statement has been modified in favor of a requirement to *orally disclose* specific items within the disclosure statement. However, other rule language modifications are now necessary to make other requirements within the rule workable. Specifically, any section regarding the use of third-party verifications that contains a requirement to have the customer “verbally acknowledge that he or she understands the uniform disclosure statement” needs to be modified or stricken.

In scenarios where in-person marketing is not utilized (meaning a written copy of the Uniform Disclosure Statement is not provided prior to enrollment), the customer will simply have no idea what the Uniform Disclosure Statement is despite the fact that the sales agent would have already orally disclosed to the customer items (d) through (o) as required by Section 412.120(c). To remedy this issue, Liberty Power is providing modified language (below) which carries out the intent of the rule – to have the customer acknowledge they understand the individual items contained within the Uniform Disclosure Statement:

Even in the case of in-person marketing, where the current language is technically workable, consistent with our previous comments, Liberty Power believes third-party

October 27, 2009

verification (“TPV”) requirements should be uniform and not vary according to marketing method in order to reduce transaction costs. Therefore, Liberty Power also suggests the following modification:

Section 412.120(c)

When third-party verification is used to authorize a customer’s enrollment during the telemarketing call, the third-party verification must contain items (d) – (n) of verifier must require the customer to verbally acknowledge that he or she understands the uniform disclosure statement.

Please note that the modification above also reduces the number of items by one. Liberty Power does not believe it is necessary that the TPV contains “a statement that the RES is an independent seller of power and energy service and that the RES is not representing or acting on behalf of the electric utility, governmental bodies, or consumer groups.” The draft already contains requirements that this statement is made orally to the customer; there is no need to duplicate this effort in the TPV process. This suggested change is further elaborated on later in these comments (*Section 412.330 – Uniform Disclosure Requirements; 3. Arrangement of Items*).

MidAmerican Comment:

c) If a customer elects to enroll with the RES, the RES sales agent must ensure items (d) – (o) of the uniform disclosure requirements are orally disclosed to the customer.

d) If a product is being offered at a fixed monthly charge that does not change with the customer’s usage and the fixed monthly charge does not include delivery service charges, the sales agent must explain to the customer

Comment [arm8]: d) is already contained in Section 412.330 and repeating it here in the rule is redundant.

October 27, 2009

that the fixed monthly charge is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the fixed monthly charge is not the total monthly amount for electric service.

ComEd Comment:

- d) If a product is being offered at a fixed monthly charge that does not change with the customer's usage and the fixed monthly charge does not include delivery service charges, the sales agent must explain to the customer that the fixed monthly charge is for supply charges only and that it does not include delivery service charges and applicable taxes or other charges that are billed by the electric distribution company **[NOTE: things like Rider EDR, Rider EDA, Rider AMP]** ; therefore the fixed monthly charge is not the total monthly amount for electric service.

CUB Comment:

~~d) If a product is being offered at a fixed monthly charge that does not change with the customer's usage and the fixed monthly charge does not include delivery service charges, the sales agent must explain to the customer that the fixed monthly charge is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the fixed monthly charge is not the total monthly amount for electric service.~~

MidAmerican Comment:

- d) ~~If a product is being offered at a fixed monthly charge that does not change with the~~

October 27, 2009

~~customer's usage and the fixed monthly charge does not include delivery service charges, the sales agent must explain to the customer that the fixed monthly charge is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the fixed monthly charge is not the total monthly amount for electric service~~

- e) When third-party verification is used to authorize a customer's enrollment during the telemarketing call, the third-party verifier must require the customer to verbally acknowledge that he or she understands the uniform disclosure statement.

ICEA Comment:

ICEA proposed text:

- e) When a RES engages in telemarketing and third-party verification is used to authorize a customer's enrollment, the third-party verifier must require the customer to verbally acknowledge that they understand the information contained in items (d) – (o) of the uniform disclosure requirements in Section 412.330. The third party verifier may cover each relevant item in any order it chooses so long as each relevant items is covered during the call.

Comment:

The third party verification process is a separate process; it is not a continuation of the sales call. Accordingly, it is inaccurate to imply as the current text does that the third-party verification occurs "during the telemarketing call." On a telemarketing sales call, it is conceivable that a RES would prefer to work in items (d)-(o) in its sales pitch without

October 27, 2009

referring to the items in totality as the “uniform disclosure statement”. The above language still requires the third party verifier to elicit the information contained in (d)-(o) – the vast majority of which is already required to be elicited by the third party verifier during the TPV process— but does so without requiring the third party verifier to refer to the term “uniform disclosure statement”.

Liberty Power Comment:

- e) When third-party verification is used to authorize a customer’s enrollment during the telemarketing call, the third-party ~~verifier must require the customer to verbally acknowledge that he or she understands~~ verification must contain items (d) – (n) of the uniform disclosure statement.
- f) The written disclosure statement and sales contract must be provided to the customer within three business days of the ~~electric utility confirmation of an accepted enrollment. The uniform disclosure statement can be either part of the first page of~~ the sales contract or a separate document.
- g) If a customer elects to enroll on-line as a result of an outbound telemarketing call, the requirements of Section 412.150 shall apply.

ComEd Comment:

- g) If a customer elects to enroll on-line as a result of an outbound telemarketing call, the requirements of Section 412.150 shall apply. **[NOTE: duplicative of many requirements]**

October 27, 2009

Liberty Power Comment:

g) If a customer elects to enroll on-line as a result of an outbound telemarketing call, the requirements of Section 412.450-160 shall apply.

h) The sales agent shall add the customer's name to the RES's Do Not Market List upon that person's request.

CUB Comment:

h) The sales agent shall add the customer's name to the utility's RES's Do Not Market List upon that person's request

Section 412.130 Inbound Enrollment Calls

Liberty Power Comments:

Section 412.430-140 Inbound Enrollment Calls

In the event a customer initiates a call to a RES in order to enroll for service, the RES must:

- a) Follow the requirements in Section 2EE of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2EE]
- b) Orally disclose to the customer items (d) – (o) of the uniform disclosure requirements in Section 412.330.

October 27, 2009

ComEd Comment:

- b) ~~Orally~~ Verbally disclose to the customer items (d) – (o) of the uniform disclosure requirements in Section 412.330.

ICEA Comment:

ICEA proposed text:

In the event a customer initiates a call to a RES in order to enroll for service, the RES must . . . b) Orally disclose to customers items (d) – (o) of the uniform disclosure requirements in Section 412.330. A RES may cover the items in any order it chooses so long as each relevant items is explained to the customer during the sales presentation.

Comment:

Same as that expressed for Section 412.110(c) above.

Liberty Power Comment:

- b) Orally disclose to the customer items (d) – (o) of the uniform disclosure requirements in Section 412.~~330~~110.
- c) Require the customer to verbally acknowledge that he or she understands the items contained in the uniform disclosure statement.

October 27, 2009

Liberty Power Comment:

c) ~~Require the customer to verbally acknowledge that he or she understands the items contained in the~~ The third-party verification must contain items (d) – (n) of the uniform disclosure statement.

d) Send the written disclosure statement and sales contract to the customer within 3 business days of the electric utility confirmation of an accepted enrollment.

Section 412.140 Direct Mail

Liberty Power Comment:

Section 412.440 150 Direct Mail

a) A RES that contacts customers for enrollment for power and energy service by direct mail shall include a Uniform Disclosure Statement for the product of service being solicited.

AG Comment:

Section 412.440 130 Direct Mail

a) A RES that contacts customers for enrollment for ~~power and energy~~ a product or service by direct mail shall include a Uniform Disclosure Statement for the product or service being solicited.

October 27, 2009

ComEd Comment:

a) A RES that contacts customers for enrollment for power and energy supply service by direct mail (including U.S. mail or e-mail) **[or define “direct mail”]** shall include a Uniform Disclosure Statement for the product or service being solicited.

b) The Uniform Disclosure Statement shall include (at a minimum) the items listed in Section 412.330. The Uniform Disclosure Statement must be printed on a document that will stay with the customer and that is not required to be mailed back to the RES.

AG Comment:

~~b) The Uniform Disclosure Statement shall include (at a minimum) the items listed in Section 412.330. The Uniform Disclosure Statement must be printed on a document that will stay with the customer and that is not required to be mailed back to the RES.~~

Deleted: ~

Liberty Power Comments:

b) The Uniform Disclosure Statement shall include (at a minimum) the items listed in Section 412.330 ~~110~~. The Uniform Disclosure Statement must be printed on a document that will stay with the customer and that is not required to be mailed back to the RES.

c) If a written Letter of Authorization is being used to authorize a customer's enrollment, it shall contain a statement that the customer has read and understands the items contained in the Uniform Disclosure Statement.

October 27, 2009

If parties believe that the proposed requirement contained in c) cannot be combined with the Letter of Authorization, Staff offers the following alternative:

If a written Letter of Authorization is being used to authorize a customer's enrollment, the RES shall require the customer to return a signed statement that the customer has read and understands the items contained in the Uniform Disclosure Statement.

AG Comments:

~~e) If a written Letter of Authorization is being used to authorize a customer's enrollment, it shall contain a statement that the customer has read and understands the items contained in the Uniform Disclosure Statement.~~

~~*If parties believe that the proposed requirement contained in c) cannot be combined with the Letter of Authorization, Staff offers the following alternative:*~~

~~*If a written Letter of Authorization is being used to authorize a customer's enrollment, the RES shall require the customer to return a signed statement that the customer has read and understands the items contained in the Uniform Disclosure Statement.*~~

MidAmerican Comment:

MidAmerican prefers this original language.

~~*If parties believe that the proposed requirement contained in c) cannot be combined with the Letter of Authorization, Staff offers the following alternative:*~~

~~*If a written Letter of Authorization is being used to authorize a customer's enrollment,*~~

October 27, 2009

~~the RES shall require the customer to return a signed statement that the customer has read and understands the items contained in the Uniform Disclosure Statement.~~

- d) If a customer initiates a call to the RES for enrollment as a result of a direct mail solicitation, the RES must comply with Section 412.130.

AG Comments:

- ~~d) If a customer initiates a call to the RES for enrollment as a result of a direct mail solicitation, the RES must comply with Section 412.130.~~

Liberty Power Comments:

- d) If a customer initiates a call to the RES for enrollment as a result of a direct mail solicitation, the RES must comply with Section 412.430140.
- e) If a customer elects to enroll on-line as a result of a direct mail solicitation, the requirements of Section 412.150 shall apply.

AG Comments:

- ~~e) If a customer elects to enroll on-line as a result of a direct mail solicitation, the requirements of Section 412.150 shall apply.~~

October 27, 2009

Liberty Power Comments:

- e) If a customer elects to enroll on-line as a result of a direct mail solicitation, the requirements of Section 412.450-160 shall apply.

Section 412.150 Online Marketing

AG Comments:

Section 412.450 140 Online Marketing

Liberty Power Comments:

Section 412.450 160 Online Marketing

- a) Each RES offering retail electric products to customers online shall prominently display the Uniform Disclosure Statement for any products offered without requiring the consumer to enter any personal information other than zip code, electric utility service territory, and/or type of service being sought (residential or commercial).

AG Comments:

- a) Each RES offering ~~retail electric a product or services~~ products to customers online shall prominently display the Uniform Disclosure Statement for any products offered without requiring the consumer to enter any personal information other than zip code,

October 27, 2009

electric utility service territory, and/or type of service being sought (~~residential/~~
~~commercial~~).

ComEd Comment:

- a) Each RES offering retail electric power and energy supply service products to customers online shall prominently display the Uniform Disclosure Statement for any products or service offered without before requiring the consumer to enter any personal information other than zip code, electric utility service territory, and/or type of service being sought (residential or ~~commercial~~ non-residential).

Liberty Power Comments:

Liberty Power has no issue with the Uniform Disclosure Statement being displayed online for products that allow for online or electronic enrollment. However, Liberty Power seeks to clarify the ORMD's intent in limiting the amount of information the customer must enter in order to locate their Uniform Disclosure Statement. If the ORMD envisions a customer having the ability to enter "no more than their zip code, electric utility service territory, and/or type of service being sought (residential or commercial)" and having a Uniform Disclosure Statement be generated specific to that customer's offer, this is not technically feasible under current marketing practices. This would imply, for example, that a RES only has one generic offer for all small commercial electric customers at a specific zip code. This is simply not the case.

Products (and subsequently their Uniform Disclosure Statement) will most notably vary by the nature of the product (fixed vs. variable) and the length of the contract. Any variance in

October 27, 2009

these terms as well as other aspects such as price, the presence of guaranteed savings, etc. will also require unique Uniform Disclosure Statements. It is certainly feasible that 20 or more Uniform Disclosure Statements would be necessary to capture all the products available to a specific customer class, for a specific commodity, at a specific zip code. In order to ensure the rule is never interpreted to require a single Uniform Disclosure Statement is produced by solely entering the aforementioned information, Liberty Power has provided two different recommendations for consideration:

Option 1

Each RES offering retail electric products to customers online shall prominently display the Uniform Disclosure Statement for any products offered through online enrollment without requiring the consumer to enter any personal information other than zip code, electric utility service territory, and/or type of service being sought (residential or commercial).

Option 2

Each RES offering retail electric products to customers online shall prominently display the Uniform Disclosure Statement for any products offered through online enrollment without requiring the consumer to enter any personal information other than zip code, electric utility service territory, and/or type of service being sought (residential or commercial). Nothing in the section shall prevent the RES from requiring the customer to enter product information such as the nature of the product (fixed or variable), the length of the term, the anticipated flow start date, and the applicable rate.

October 27, 2009

Liberty Power Comment:

- a) Each RES offering retail electric products to customers online shall prominently display the Uniform Disclosure Statement for any products offered ~~without requiring the consumer to enter any personal information other than the zip code, electric utility service territory, and/or type of service being sought (residential or commercial).~~
- b) The Uniform Disclosure Statement must be printable in a PDF format not to exceed two pages in length, and shall be available for downloading by the customer.

AG Comment:

- b) The Uniform Disclosure Statement must be printable in a PDF format not to exceed two pages in length, and shall be available for downloading by the customer.

Comment [KCM9]: Why specify format? Mandate it be available in two or three forms, and if you do specify, define the terms.

ComEd Comment:

- b) The Uniform Disclosure Statement must be printable in a PDF format not to exceed two pages in length, and shall be available ~~for downloading~~ electronically by the customer.
- c) The RES shall obtain, in accordance with 83 Illinois Administrative Code 453 and the procedures outlined below, an authorization to change RES that confirms and includes appropriate verification data by encrypted customer input on a supplier's Internet web site.

October 27, 2009

AG Comment:

c) The RES shall obtain, ~~in accordance with 83 Illinois Administrative Code 453 and the procedures outlined below,~~ an authorization to change RES that confirms and includes appropriate verification data by encrypted customer input on a supplier's Internet web site.

ComEd Comment:

c) The RES shall obtain, in accordance with 83 Illinois Administrative Code 453 and the procedures outlined below, an authorization to change RES **[NOTE: is this meant to be a LOA per the terms in admin code 453?]** that confirms and includes appropriate verification data by encrypted customer input on ~~the a RES supplier's Internet web-site.~~

d) The RES shall require the following customer information in an electronic authorization form:

- 1) The customer's name;
- 2) Confirmation that the person completing the form wants to make the supplier change;
- 3) The customer's consent to the price of the service to be supplied and the material terms and conditions of the service being offered;
- 4) The service address affected by the supplier switch;
- 5) The electric utility account number;
- 6) The billing address if different from service address; and

October 27, 2009

ComEd Comment:

- 6) The ~~billing~~ mailing address if different from service address; and
- 7) The customer's electronic mail address.

ComEd Comment:

- 7) The customer's ~~electronic~~ e-mail address.

AG Comment:

~~d) The RES shall require the following customer information in an electronic authorization form:~~

- ~~1) The customer's name;~~
- ~~2) Confirmation that the person completing the form wants to make the supplier change;~~
- ~~3) The customer's consent to the price of the service to be supplied and the material terms and conditions of the service being offered;~~
- ~~4) The service address affected by the supplier switch;~~
- ~~5) The electric utility account number;~~
- ~~6) The billing address if different from service address; and~~

October 27, 2009

7) ~~The customer's electronic mail address.~~

d) Any Internet enrollment website of the RES shall, at a minimum, include:

- 1) All items within the Uniform Disclosure Statement;
- 2) A statement that electronic acceptance of a sales contract is an agreement to initiate service and begin enrollment;
- 3) A statement that the customer should consult the sales contract and/or contact the existing supplier to learn if any early termination fees are applicable;
- 4) A requirement that the customer accept or not accept the sales contract by clicking the appropriate box, displayed as part of the terms and conditions;
- 5) A telephone number and e-mail address where the customer can express his or her decision to rescind the sales contract, including hours of operation; and
- 6) A Letter of Authorization.

e) The Internet enrollment website of the RES shall, at a minimum, include:

ComEd Comment:

e)The ~~Internet~~ enrollment website of the RES shall, at a minimum, include:

- 1) All items within the Uniform Disclosure Statement. The minimum list of items

October 27, 2009

to be included in the Uniform Disclosure Statement is contained in Section 412.330;

Liberty Power Comment:

- 1) All items within the Uniform Disclosure Statement. The minimum list of items to be included in the Uniform Disclosure Statement is contained in Section 412.330-110;
- 2) A statement that electronic acceptance of a sales contract is an agreement to initiate service and begin enrollment;
- 3) A statement that the customer should consult the sales contract and/or contact the existing supplier to learn if any early termination fees are applicable;

ComEd Comment:

- 3) A statement that the customer should consult the sales contract and/or contact their existing current supplier to learn if any early termination fees are applicable;

ICEA Comment:

ICEA proposed text:

- (e)(3) A statement that the customer is encouraged to consult the sales contract and/or contact the existing supplier to learn if any early termination fees are applicable;

October 27, 2009

- 4) A requirement that the customer accept or not accept the sales contract by clicking the appropriate box, displayed as part of the terms and conditions;
- 5) An e-mail address where the customer can express his or her decision to rescind the sales contract.

ComEd Comment:

- 5) An e-mail address or phone number of the RES where the customer can express his or her decision to rescind the sales contract.

Sections 412.110 through 412.150 appear duplicative in nature. These could be revised to provide more direct insight to overall marketing requirements, with the subparts breaking out the exceptions for the different flavors of marketing. For example, the requirements to provide hardcopies of their contracts on request or Uniform Disclosure is universal, and should be treated as such, while any requirements to have a third party telephonic verification would only be provided in a telemarketing subpart.

AG Comment:

- e) ~~The Internet enrollment website of the RES shall, at a minimum, include:~~
 - 1) ~~All items within the Uniform Disclosure Statement. The minimum list of items to be included in the Uniform Disclosure Statement is contained in Section 412.330;~~
 - 2) ~~A statement that electronic acceptance of a sales contract is an agreement to~~

October 27, 2009

~~initiate service and begin enrollment;~~

~~3) 3) A statement that the customer should consult the sales contract and/or contact the existing supplier to learn if any early termination fees are applicable;~~

~~4) 4) A requirement that the customer accept or not accept the sales contract by clicking the appropriate box, displayed as part of the terms and conditions;~~

~~5) 5) An e-mail address where the customer can express his or her decision to rescind the sales contract.~~

Section 412.160 Training of sales agents

Liberty Power Comment:

Section 412.~~460~~ 170 Training of sales agents

a) All sales agents shall be knowledgeable with the RES's products and services offered in Illinois, as they pertain to the customer class that the sales agent is actively marketing to, including the requirements contained in this code part and other relevant requirements contained in the Act, the Consumer Fraud and Deceptive Business Practices Act and the Illinois Administrative Codes that pertain to the marketing and sales of electric supply service.

October 27, 2009

AG Comments:

a) All sales agents shall be knowledgeable with RES and utility policies and procedures, including Illinois statutes and rules ~~the RES's products and services offered in Illinois, as they pertain to the customer class that the sales agent is actively marketing to, including the requirements contained in this code part and other relevant requirements contained in the Act, the Consumer Fraud and Deceptive Business Practices Act and the Illinois Administrative Codes~~ that pertain to the marketing and sales of electric supply service.

ComEd Comment:

a) All sales agents shall be knowledgeable ~~with~~ of the RES's products and services offered in Illinois, as they pertain to the customer class that the sales agent is actively marketing to, including the requirements contained in this code part and other relevant requirements contained in the Act, the Consumer Fraud and Deceptive Business Practices Act and the Illinois Administrative Codes that pertain to the marketing and sales of electric supply service.

[NOTE: ComEd suggests a different approach, where RESs would file their education plan with the CSD, thereby giving an indication of the appropriateness of the training. Measuring the ability for an agent to be "knowledgeable" is an impossible task]

The Training of Sales Agents under §412.160 is vague, requiring only that agents be "knowledgeable," and contains no actual training requirement. It may be useful to align this section and §412.310 with the requirements of §452.330 of the Commission's IDC rule to

October 27, 2009

require RESs to provide an education plan and materials to the CSD in order to provide insight into how RES agents are being educated and to provide a modicum of oversight.

b) All sales agents should be familiar with the RES's products and services that they sell, including the rates, applicable termination fees if any, payment options and the customers' right to cancel. In addition, the sales agents shall have the ability to provide the customer with a toll-free number for billing questions, disputes, and complaints, as well as the Commission's toll-free phone number for complaints.

ICEA Comment:

ICEA proposed text:

- a) A sales agent shall be knowledgeable of the requirements applicable to the marketing and sales of electric supply to the customer class that he or she is targeting. In addition to this Code Part, requirements pertaining to the marketing and sales of electric supply service may be found in other Illinois Administrative Code Parts, the Act, and, the Consumer Fraud and Deceptive Business Practices Act.
- b) A sales agent should be familiar with products and services that that he or she personally sells, including the rates, applicable termination fees if any, payment options and the customers' right to cancel. In addition, all sales agent shall have the ability to provide the customer with a toll-free number for billing questions, disputes, and complaints, as well as the Commission's toll-free phone number for complaints.

Comment:

October 27, 2009

The proposed change attempts to clear up what appears to be some duplication in the first sentences of (a) and (b).

MidAmerican Comment

- b) All sales agents should be familiar with the RES's products and services that they sell, including the rates, applicable termination fees if any, ~~payment-billing~~ options and the customers' right to cancel. In addition, the sales agents shall have the ability to provide the customer with a toll-free number for billing questions, disputes, and complaints, as well as the Commission's toll-free phone number for complaints.
- c) A RES and its sales agents shall not utilize false, misleading, materially inaccurate, or otherwise deceptive language or materials in soliciting or providing services.
- d) A RES and its sales agents shall refrain from any direct marketing or soliciting of electric supply service to customers on the electric utility's Do Not Market List, which the electric utility shall make available at least monthly on the 15th calendar day of the month. If the 15th calendar day is a non-business day, the electric utility shall make the list available on the next business day following the 15th calendar day of that month. The Do Not Market List maintained by the electric utility shall contain the customer's name, address, and phone number(s). RESs shall use the most current version of the Do Not Market List available; however, in assessing compliance with this section, 31 days will be afforded to RESs to account for the time required by the RES to disseminate and process the list internally.

Comment [arm10]: Please clarify that this means options the customer has to pay the RES, or how the customer will pay his/her bill. Perhaps the wording should be "If the RES plans to bill the customer under the utility's UCB/POR tariffs, the RES sales agent must explain this billing option to the customer." No where in these rules are billing options (more so than "payment options") discussed with customers, who need to be aware that they may still receive a bill from their utility company, not the RES, and still be expected to pay their utility company.

October 27, 2009

AG Comment:

d) A RES and its sales agents shall refrain from any direct marketing or soliciting of electric supply service to customers on the electric utility's Do Not Market List, which the electric utility shall make available at least monthly on the 15th calendar day of the month. If the 15th calendar day is a non-business day, the electric utility shall make the list available on the next business day following the 15th calendar day of that month. The Do Not Market List maintained by the electric utility shall contain the customer's name, address, and phone number(s). RESs shall use the most current version of the Do Not Market List available; however, in assessing compliance with this section, 31 days will be afforded to RESs to account for the time required by the RES to disseminate and process the list internally.

Comment [KCM11]: I don't get the timing – to me, this implies a rolling 31 day waiver? Is that right?

ComEd Comment:

d) A RES and its sales agents shall refrain from any direct marketing **[NOTE: unclear what direct means in this context, door to door, mail, email?]** or soliciting of electric supply service to customers on the electric utility's Do Not Market List or to any individual customer that the RES added to their own Do Not Market List, which the electric utility shall make available at least monthly on the 15th calendar day of the month. If the 15th calendar day is a non-business day, the electric utility shall make the list available on the next business day following the 15th calendar day of that month. The Do Not Market List maintained by the electric utility shall contain the customer's name, premise address, and phone number(s) as maintained in the utilities' customer system that shall be updated monthly. RESs shall use the most current version of the utility's Do Not Market List available and their own do not market list; however, in assessing compliance with this section, 31 days will be afforded to RESs to account for the time required by the RES to disseminate and process the utility list internally.

October 27, 2009

ComEd Comment:

[NOTE: subsections (c) and (d) below are not training related; (c) is already in the UDR and (d) would be best covered in the definition for the Do Not Market List]

Section 412.170 Records Retention and Availability

Liberty Power Comment:

Section 412.470 180 Records Retention and Availability

- a) A RES must retain, for a minimum of two years or, for the length of the sales contract, whichever is longer, verifiable proof of authorization to change suppliers for each customer. Authorization records need to be provided by the RES within seven business days after a request is made by the Commission or Commission Staff.

AG Comment:

- a) A RES must retain, for a minimum of two (2) years or, for the length of the sales contract plus two (2) years, ~~whichever is longer~~ verifiable proof of authorization to change suppliers for each customer.

ComEd Comments:

- a) A RES must retain, for a minimum of two years or, for the length of the sales contract, whichever is longer, verifiable proof of authorization to change suppliers for each customer. Authorization records need to be provided by the RES within seven business

October 27, 2009

days after a request is made by the Commission or Commission Staff. **[NOTE: why would this be needed in 7 days? Would this already be covered in resolving disputes?]**

b) Throughout the duration of the contract, and for two years thereafter, the RES shall retain and, within seven business days of the customer's request, provide the customer a copy of the sales contract via e-mail, U.S. mail, or facsimile. The RES may charge a fee for such copies if a customer requests more than two copies in a 12-month period.

AG Comment:

~~b) Throughout the duration of the contract, and for two years thereafter, the RES shall retain and, within seven business days of the customer's request, provide the customer a copy of the sales contract via e-mail, U.S. mail, or facsimile. The RES may charge a fee for such copies if a customer requests more than two copies in a 12-month period.~~

b) Copies of authorization records must be provided by the RES within seven (7) business days upon customer request via e-mail, U.S. mail, or facsimile. The RES may charge a fee for such copies if a customer requests more than two copies in a 12-month period.

ComEd Comment:

b) Throughout the duration of the contract, and for two years thereafter, ~~the RES shall retain and, within seven business days of the~~ a customer's may request, ~~provide the~~

October 27, 2009

~~customer~~ a copy of the sales contract via e-mail, U.S. mail, or facsimile. The RES may charge a fee for such copy ~~ies~~ if a customer requests more than two copies in a 12-month period.

AG Comment:

c) Authorization records need to be provided by the RES within seven (7) business days upon request after a request is made by the of the Commission or Commission Staff.

October 27, 2009

SUBPART C: RESCISSION, DEPOSITS, EARLY TERMINATION AND AUTOMATIC
RENEWAL OF CONTRACT

Section 412.200 Application of Subpart C

The provisions of this Subpart shall apply to retail electric suppliers serving or seeking to serve residential or small commercial customers.

Liberty Power Comments:

The provisions of this Subpart shall apply to retail electric suppliers in connection with the provision of service and marketing to ~~serving or seeking to serve~~ residential or small commercial customers.

Section 412.210 Rescission of sales contract

Within one business day after accepting a valid electronic enrollment request from the RES, the electric utility will notify the customer in writing of the scheduled enrollment and the name of the RES that will be providing power and energy service. If the customer wishes to rescind its enrollment with the supplier, the customer will not incur any early termination fees if the customer contacts either the electric utility or the RES within ten calendar days of the electric utility's acceptance of the enrollment request. If the tenth calendar day falls on a non-business day, the rescission period will be extended through the next business day. The written enrollment notice from the electric utility will state the last day for making a request to rescind the enrollment. In the event the customer provides notice of such rescission to the electric utility, the electric utility shall notify the RES.

October 27, 2009

AG Comment:

The electric utility shall notify the customer in writing of a scheduled enrollment within one (1) business day of accepting a valid electronic enrollment request, including the name and contact information of the RES which submitted the enrollment request. Within one business day after accepting a valid electronic enrollment request from the RES, the electric utility will notify the customer in writing of the scheduled enrollment and the name of the RES that will be providing power and energy service. If the customer wishes to rescind this enrollment, and contacts either the electric utility or the RES with in ten (10) calendar days of notification, that customer shall not incur any early termination fees. ~~Its enrollment with the supplier, the customer will not incur any early termination fees if the customer contacts either the electric utility or the RES within ten calendar days of the electric utility's acceptance of the enrollment request.~~ If the tenth calendar day falls on a non-business day, the rescission period will be extended through the next business day. The written notification enrollment notice from the electric utility must provide the name and contact information of the RES which submitted the enrollment request, the date the request was submitted and the last day for which a rescission request can be made under this section ~~will state the last day for making a request to rescind the enrollment.~~ In the event the customer provides notice of such rescission to the electric utility, the electric utility shall notify the RES.

ComEd Comment:

Section 412.210 Rescission of sales contract **[NOTE: rescind should be defined]**

Within one business day after accepting a valid electronic enrollment request from the RES, the electric utility will notify the customer in writing of the scheduled enrollment and the name of the RES that will be providing power and energy service. If the customer wishes to rescind its enrollment with the supplier, the customer will not incur any early termination fees

October 27, 2009

if the customer contacts either the electric utility or the RES within ten calendar days of the electric utility's acceptance of the enrollment request. If the tenth calendar day falls on a non-business day, the rescission period will be extended through the next business day. The written enrollment notice from the electric utility will state this tenth last day for making a request to rescind the enrollment without a termination fee. In the event the customer provides proper rescission notice ~~of such rescission~~ to the electric utility, the electric utility shall notify the RES.

Liberty Power Comment:

Although in previously submitted comments, Liberty Power focused our concerns on the "early termination waiver period" and did not opine on the length of the proposed rescission period, we will take the opportunity to comment further on the issue now.

Liberty Power believes that a rescission period that begins after the electric utility's acceptance of enrollment request and continues for a minimum of ten business days (and is extended if the 10th calendar day falls on a non-business day) is excessive. As currently drafted, the rescission period could last as long as 17 calendar days from the time the customer is contracted until the time they rescind. This is best illustrated through an example:

A customer is contracted on a Friday. Typically, it takes a RES two days to submit an enrollment request. Let's assume the RES makes the enrollment request on Tuesday after 3PM. The utility will not accept the enrollment request until Wednesday. If Wednesday starts the "10-day clock" then the tenth day would fall on the next Friday. If Friday happens to fall on a holiday (i.e. Christmas Day 2010), the rescission period will

October 27, 2009

be extended to Monday, marking 17 full days from the time the customer was contracted until their last day to rescind.

The purpose of a rescission period is to protect buyers from their own impulses, or “buyer’s remorse”. Typical rescission periods are three (3) business days, and in fact there is already an existing precedent for a three (3) business day rescission period in the competitive Illinois electric market. Section 453.40(a)(4) of Title 83 of the Illinois Administrative Code states: [An electronic LOA must provide the following information...] A conspicuous statement, within the body of the electronic version of the contract, that residential customers may cancel the enrollment **within 3 business days after the Internet enrollment** [emphasis added].

Just as the ability for a customer to cancel a contract (without being subject to early termination fees) almost three months after contracting with a RES (as contemplated in Section 412.230) adds costs to the product offering to reflect the added risks involved, so too does the ability for a customer to rescind a contract more than two weeks after entering into that contract.

As individual rule provisions, both the length of the rescission period and the “early termination fee waiver period” (which is more or less an additional, extended rescission period for fixed-price products) is a concern to Liberty Power due to the impact it will have on consumer prices. However, the combined risk of both rules would establish the Illinois competitive electric market as undoubtedly the riskiest restructured market for doing business with mass market customers. These added risks will ultimately result in added costs and higher prices.

October 27, 2009

In Liberty Power's previous argument regarding the "early termination fee waiver period" (as contemplated in Section 412.230), it was stated that one reason why this rule is not necessary because the ten (10) calendar day rescission period is already more than sufficient time to allow a customer to review their contract and cancel if necessary. If the ORMD does not adopt either of Liberty Power's previously suggested modifications regarding the "early termination fee waiver period" then Liberty recommends the rescission period be reduced to ensure customers don't experience significantly higher prices than would otherwise be afforded to them due the "double whammy" associated with risks caused by what basically amounts to a two week and a three month rescission period. While Liberty Power remains vehemently opposed to any rule provision that allows a customer to cancel a contract after receiving their first bill, thus creating a rescission period that grossly exceeds 10 calendar days, the following modification is recommended if Section 412.230 remains in its current form:

Section 412.210

Within one business day after accepting a valid electronic enrollment request from the RES, the electric utility will notify the customer in writing of the scheduled enrollment and the name of the RES that will be providing power and energy service. If the customer wishes to rescind its enrollment with the supplier, the customer will not incur any early termination fees if the customer contacts either the electric utility or the RES within three business ~~ten~~ ~~calendar~~ days of the electric utility's acceptance of the enrollment request. ~~If the tenth calendar day falls on a non-business day, the rescission period will be extended through the next business day.~~ The written enrollment notice from the electric utility will state the last day for making a request to rescind the enrollment. In the event the customer provides notice of such rescission to the electric utility, the electric utility shall notify the RES.

October 27, 2009

MidAmerican Comment:

Section 412.210 ~~Rescission of Sales contract~~ rescission notifications

Within one business day after accepting a valid electronic enrollment request from the RES, the electric utility will notify the customer in writing of the scheduled enrollment and the name of the RES that will be providing power and energy service. The written enrollment notice from the electric utility will state the last day for making a request to rescind the enrollment.

If the customer wishes to rescind its enrollment with the supplier, the customer will not incur any early termination fees if the customer contacts either the electric utility or the RES within ten calendar days of the electric utility's acceptance of the enrollment request. If the tenth calendar day falls on a non-business day, the rescission period will be extended through the next business day. ~~The written enrollment notice from the electric utility will state the last day for making a request to rescind the enrollment.~~ In the event the customer provides notice of such rescission to the electric utility, the electric utility shall notify the RES. In the event the customer provides notice of such rescission to the RES, the RES shall notify the electric utility.

Section 412.220 Deposits

A RES shall not require a customer deposit if the RES is selling the receivables for power and energy for that customer to the electric utility pursuant to Section 16-118(c) of the Act.

ComEd Comment:

A RES shall not require a customer deposit if the RES is selling the receivables for power and energy for that customer to the electric utility pursuant to Section 16-118(c) of the Act. A

October 27, 2009

deposit shall be refunded if a RES previously required a deposit under their own retail bill option and moves to sell their receivables for power and energy to the electric utility.

Section 412.2430 Early Termination Fee **[NOTE: termination fee may need to be defined]**

Section 412.230 Early Termination Fee

Any agreement between a RES and a customer that contains an early termination fee shall disclose the amount of the early termination fee or the formula used to calculate the termination fee. It must also state that the early termination fee does not apply if the customer cancels the contract within the rescission period described above. In addition, any agreement that contains an early termination fee shall provide the customer the opportunity to terminate the agreement without any termination fee or penalty within 10 business days after the date of the first bill issued to the customer for products or services provided by the RES. This requirement does not relieve the customer of obligations for services rendered under the agreement prior to termination.

AG Comment:

Section 412.4 230 Early Termination Fee

Any agreement ~~between a RES and a customer~~ that contains an early termination fee shall disclose the amount of the early termination fee or the formula used to calculate the termination fee, provided that the fee does not exceed \$50 in total. Any such agreement must ~~it must~~ also state that the early termination fee does not apply if the customer cancels the contract within the rescission period described above and state the customer will be provided ~~In addition, any agreement that contains an early termination fee shall provide the customer~~ the opportunity to terminate the agreement without any termination fee or penalty within ten (10) business days after the date of the first bill issued to the customer for

October 27, 2009

products or services provided by the RES. This requirement does not relieve the customer of obligations for services rendered under the agreement prior to termination.

ComEd Comment:

Section 412.4~~2~~30 Early Termination Fee **[NOTE: termination fee may need to be defined]**

Any agreement between a RES and a customer that contains an early termination fee shall disclose the amount of the early termination fee or the formula used to calculate the termination fee. It must also state that the early termination fee does not apply if the customer cancels the contract within the rescission period described ~~above~~ in Section 412.210 **[NOTE: duplicative of 412.210]**. In addition, any agreement that contains an early termination fee shall provide the customer the opportunity to terminate the agreement without any termination fee or penalty within 10 business days after the date of the first bill issued to the customer for products or services provided by the RES. This requirement does not relieve the customer of obligations for services rendered under the agreement prior to termination.**[NOTE: this RES service drop may not be effective until the next bill due to consideration of switching rules]**

CUB Comment:

Any agreement between a RES and a customer that contains an early termination fee shall disclose the amount of the early termination fee or the formula used to calculate the termination fee, provided that termination fees are capped at \$50 total per contract. It must also state that the early termination fee does not apply if the customer cancels the contract within the rescission period described above. In addition, any agreement that contains an early termination fee shall provide the customer the opportunity to terminate the agreement without any termination fee or penalty within 10 business days after the date of the first bill

October 27, 2009

issued to the customer for products or services provided by the RES. This requirement does not relieve the customer of obligations for services rendered under the agreement prior to termination.

Comment: The ORMD choosing not to cap termination fees is extremely puzzling to me. Outrageous cancellation fees being charged by suppliers was one of the largest problems we observed in the gas market, prior to the gas legislation capping termination fees at \$50.

Liberty Power Comment:

Section 412.430 230 Early Termination Fee

Any agreement between a RES and a customer that contains an early termination fee shall disclose the amount of the early termination fee or the formula used to calculate the termination fee. It must also state that the early termination fee does not apply if the customer cancels the contract within the rescission period described above. ~~In addition, any agreement that contains an early termination fee shall provide the customer the opportunity to terminate the agreement without any termination fee or penalty within 10 business days after the date of the first bill issued to the customer for products or services provided by the RES. This requirement does not relieve the customer of obligations for services rendered under the agreement prior to termination.~~

Comments:

1. Early Termination Fee "Waiver Period"

One of Liberty Power's greatest concerns with the current drafted language pertains to this subsection. As previously discussed during the course of these proceedings, allowing a

October 27, 2009

customer to cancel a contract without early termination fees being applicable up to ten (10) business days after the date of the first bill issued is unreasonable, would harm customers due to higher prices, limit the number of fixed-price offers in the market, allow customers to game the market (potentially resulting in a RES going bankrupt), and generally cause undue harm to the competitive market.

While Liberty Power acknowledges that this rule is currently in place in the Illinois competitive gas market, the notion that this fact alone provides justification for applying this same rule to the competitive electric market perversely over-simplifies the issue. The argument that natural gas and electricity are both commodities and therefore should be governed by similar rules is at best misguided. After all, oil, gold, soybeans, etc. are all commodities, but are subject to different rules as they are unique commodities.

Electricity is very unique as it cannot be stored, and therefore no inventory exists. This fundamental aspect of electricity in large part contributes to the volatility of electricity prices. As discussed in previously submitted comments and during the course of these workshops, in order to manage this volatility, conservative hedging practices dictate that an RES pre-purchase 100% (or nearly 100%) of the estimated usage for the contract term within a few days of contract execution. To allow a customer to cancel a fixed-price contract without penalty for as many as 87 days² after signing the contract, would preclude an RES from recovering actual incurred damages, and will have a huge detrimental effect on the market's access to products that promote and support budget certainty.

As previously discussed during comments and at the most recent workshop, a provision that allows a customer to cancel a contract ten (10) business days after receiving their first bill

October 27, 2009

would promote an environment of market manipulation. In a downward market, a customer could lock themselves into a fixed-price contract when they believe market rates to be at their lowest. However, if commodity prices continue to fall during the time period between customer enrollment and the receipt of their first bill, they could cancel the contract, not be subjected to any early termination fees, and sign a new contract at a lower rate. This process could feasibly continue on and on until market rates begin to trend upward.

It is certainly possible that from the time the customer contracts with the RES from the time the customer receives their first bill that market rates could fall by 10% or more. While the financial damage caused from one mass market customer canceling their contract without being subject to early termination fees is perhaps minimal, the damage caused by 100, 1,000, or 10,000 customers canceling under the same conditions is significant and could certainly result in the default of a RES. For illustration purposes, Liberty Power is providing the following hypothetical scenario:

In August, a RES contracts 10,000 aggregated residential customers on two-year fixed price contracts. The total estimated usage over the course of the term is 240,000 MWh³. Shortly thereafter, the RES pre-purchases 240,000 MWh at a price of \$50 per MWh for a total of \$12M. Let's assume market rates continue to fall, and sometime in October, after receiving their first bill all 10,000 customers cancel their contract. Even if those customers must remain with the RES for an additional month before the change can be effectuated, the RES still would have approximately 220,000 MWh that it would need to sell back into the market. If the market rate is at that time \$45 MWh (only a 10% decrease) the RES would lose at a minimum \$5/MWh or \$1.1M. Certainly, the loss of this capital could permanently hinder any undercapitalized RES, even result in bankruptcy, forcing customers to the provider of last resort.

October 27, 2009

In order to avoid financial repercussions associated with high-risk scenarios such as the one outlined above, a RES will have to make a business decision on how to best mitigate this risk. A RES could choose not to offer fixed-price contracts to mass market customers. Alternatively, a RES may account for this risk by factoring additional protection into their pricing. In other words, if a RES believes market prices could fall 10% between the time the customer is contracted until the time the customer can cancel the contract (without being subjected to early termination fees), then it would not be unreasonable for the offer price to be 10% higher than what it would normally be if early termination fees were still applicable. Another option may be for a RES to socialize this risk factor among all customers, raising prices on all offers rather than the specific fixed contract in question. Not only is it simply unfair for all customers to pay a higher rate to account for the possibility of gaming by others, but all of these approaches contradicts some of the principal benefits and goals of competition – to apply downward pressure on prices and to offer customers a variety of products (including fixed-rate options) so they can choose an option that best suites their energy needs.

At the last in-person workshop, the above scenario was discussed, albeit in much less detail. One counterpoint offered was that mass market customers are not sophisticated enough to continually break contractual agreements in order to manipulate their way to better pricing. This is a very dangerous assumption. While initially this may be true for an individual resident, certainly agents, brokers, and consultants (ABCs) will be aware of such a rule and how to take advantage of it. It is quite possible that an ABC's entire business model could center on taking advantage of this apparent "loophole". In fact, one could easily imagine an ABC being quite successful in aggregating a large number of customers using the selling point, "Sign up with me, and I promise you if market rates fall between the time

October 27, 2009

you contract with a RES until the time you receive your first bill, I will get you a new lower rate without any penalties for canceling or switching”.

The purpose of a fixed price contract is to provide certainty to risk adverse customers. If a customer prefers to have the lowest possible rate today then the appropriate action would be to suggest to the customer they consider a variable or market rate product, rather than having the option to potentially game the system and continually sign and cancel contracts to the detriment of the RES, other customers, and the competitive retail market.

Additionally, customers are already afforded a sufficient period of time (the current proposal suggest ten calendar days, potentially more if the tenth day falls on a non-business day) to review their terms and conditions and rescind their contract, if they desire. A rescission period that is 10 days (or more) provides adequate protection to the customer and significant additional time to review the terms and conditions of a contract is not warranted.

During the last workshop, Liberty Power asked advocates of this rule to elaborate on the rule's intent. It was stated that the rule is intended to protect customers that were mislead or deceived by “bad actors” in the marketplace and are unaware of this deception until they receive their first bill. Liberty Power supports remedies to protect customers from being mislead, deceived, or lied to. However, these remedies must address individual (and rare) instances where rules were violated and not create blanket rules that negate bilateral contracts for all customers just to protect against the mere possibility of fraud being committed.

October 27, 2009

Liberty Power is in favor of fair and competitive markets and establishing rules that are designed to provide customers a wide-ranging portfolio of products to choose from. This proposed rule is a huge step away from achieving that goal. For all the reasons mentioned above, Liberty Power is suggesting the following language:

Any agreement between a RES and a customer that contains an early termination fee shall disclose the amount of the early termination fee or the formula used to calculate the termination fee. It must also state that the early termination fee does not apply if the customer cancels the contract within the rescission period described above. ~~In addition, any agreement that contains an early termination fee shall provide the customer the opportunity to terminate the agreement without any termination fee or penalty within 10 business days after the date of the first bill issued to the customer for products or services provided by the RES. This requirement does not relieve the customer of obligations for services rendered under the agreement prior to termination.~~

Liberty Power cannot emphasize enough how wholeheartedly opposed and greatly concerned we are by any rule that allows a customer to cancel a contract after receipt of their first bill. It is important to note that this rule is unprecedented in any competitive electric market and Liberty Power is extremely hesitant to offer any suggestions that would ultimately result in a precedent being created that affords a customer the opportunity to cancel a contract after the first bill. However, in the spirit of compromise, Liberty Power is once again proposing an alternative to the recommended modifications provided above:

Any agreement between a RES and a customer that contains an early termination fee shall disclose the amount of the early termination fee or the formula used to calculate the

October 27, 2009

termination fee. It must also state that the early termination fee does not apply if the customer cancels the contract within the rescission period described above. In addition, any non-fixed contract agreement that contains an early termination fee shall provide the customer the opportunity to terminate the agreement without any termination fee or penalty within 10 business days after the date of the first bill issued to the customer for products or services provided by the RES. A non-fixed contract agreement shall refer to any contract agreement where the contracted rate for the electric supply is expected to change over the term of the agreement. This requirement does not relieve the customer of obligations for services rendered under the agreement prior to termination.

While Liberty Power feels very strongly in its principal argument that the language of concern should be stricken, the alternative proposal may be a fair compromise in balancing customer protection rules and protecting the competitive marketplace. As illustrated in our argument above, the rule provided for in Section 412.230 is not at all appropriate, particularly as it pertains to fixed-rate products. Early termination fees associated with fixed-price contracts normally reflect actual liquidated damages and are an absolute necessity in protecting the long-term viability of the RES. There is no benefit to anyone if a RES goes out of business because they were not permitted to collect actual liquidated damages resulting from a customer's contractual breach. Ultimately, the rule will only result in limiting products that offer budget certainty and raise prices.

That being said, Liberty Power concedes that the proposed alternative language may have some value in protecting customers to the extent the customer is not fully aware of the applicable rate of their contract agreement and the impact to their electric bill (although, it is important to note, this apparently was not the original intent of the rule). For example, if a

October 27, 2009

customer agreed to a variable product that changed at the discretion of the RES, or was tied to a market index, the customer may not know the exact rate they will experience until they receive their first bill. While the customer should be fully aware that such a product is subject to change, due the variable nature of the product, there will always be some level of uncertainty. Some stakeholders may argue that the added uncertainty warrants additional layers of customer protection rules. While Liberty Power may not necessarily agree with this position, we acknowledge the argument. However, under the scenario when a customer is on a fixed-price contract they know the exact rate they will pay for their electric supply, agreed to that exact rate, and was afforded a ten (10) day rescission period to change their mind. As the customer is 100% certain of their energy-supply rate, any additional “waiver period” of early termination fees and the canceling of a contract is simply unwarranted and only allows for the customer to game the market, creating a detrimental effect on the competitive retail electric market.

Liberty would also like to note that questions remain to whether or not the ICC has the statutory authority to establish these consumer protection rules. In the June 2009 Annual Report submitted by the ORMD to the General Assembly, the Governor, and the Illinois Commerce Commission the ORMD Staff concluded:

“[T]he Commission lacks the explicit statutory authority to establish these requirements through additional administrative rules. As a result, we recommend the General Assembly either a) amend the Public Utilities Act to provide the Commission with explicit rulemaking authority to establish rules in line with the proposed requirements discussed, or b) turn the recommended requirements into statutory mandates.”

October 27, 2009

Liberty Power reserves its right to challenge the Commission's authority, particularly in instances where rules would abrogate a bilateral contract between a customer and the RES.

Section 412.240 Contract Renewal

a) Non-Automatic Renewal

The RES shall clearly disclose any renewal terms in their contract including any cancellation procedure. For contracts with an initial term of six months or greater, the RES shall send a notice of contract expiration separate from the bill at least 45 days prior to the date of contract expiration but no more than 90 days in advance of expiration. Nothing in this section shall preclude a RES from offering a new contract to the customer at any other time during the contract period. The separate written notice of contract expiration shall include:

AG Comment:

~~a) Non-Automatic Renewal~~

a) The RES shall clearly disclose any renewal terms in their contract including any cancellation procedure. For contracts with an initial term of six months or greater, the RES shall send a notice of contract expiration separate from the bill at least ~~45~~ 30 days prior to the date of contract expiration but no more than ~~90~~ 60 days in advance of expiration. Nothing in this section shall preclude a RES from offering a new contract to the customer at any other time during the contract period. The separate written notice of contract expiration shall include:

October 27, 2009

- 1) A statement printed or visible from the outside of the envelope or in the subject line of the email (if customer has agreed to receive official documents by e-mail) that states, "Contract Expiration Notice,"
- 2) The bill cycle in which the existing contract will expire;

ComEd Comment:

- 2) The anticipated bill cycle in which the existing contract will expire;

MidAmerican Comment:

- 2) The ~~bill cycle~~ month and year (or scheduled meter reading date) in which the existing contract will expire;

- 3) If the RES is offering a contract renewal, the disclosure of the terms and conditions of the renewal offer may be combined with the mailing of the contract expiration notice;

AG Comment:

- 3) A full description of the renewal offer, including the date service under the new offer would begin. This description ~~If the RES is offering a contract renewal, the disclosures of the terms and conditions of the renewal offer~~ may be combined with the mailing of the contract expiration notice; and

October 27, 2009

- 4) The RES must provide a full description of any renewal offers available to the customer, including the date service under the new term will begin;

AG Comment:

- ~~4) The RES must provide a full description of any renewal offers available to the customer, including the date service under the new term will begin~~

- 5) Provide a statement in no smaller than 12 point font that the customer must provide affirmative consent to accept the renewal offer and that establishing service with another electric supplier can take up to 45 days, and failure to renew their existing contract or switch to another RES by the specified date will result in the customer being reverted to the electric utility default service and provide in the statement the length of the electric utility tariff minimum stay period if applicable.

AG Comment:

~~5) 4) Provide a statement in no smaller than 12 point font that the customer must provide affirmative consent to accept the renewal offer and that establishing service with another electric supplier can take up to 45 days, and~~ Notice that failure to renew their existing contract or switch to another RES by the specified date will result in the customer being reverted to the electric utility default service and provide in the statement the length of the electric utility tariff minimum stay period if applicable.

ComEd Comment:

October 27, 2009

Provide a statement in no smaller than 12 point font that the customer must provide affirmative consent to accept the renewal offer and that establishing service with another electric supplier can take up to 45 days, and failure to renew their existing contract or switch to another RES by the specified date **[NOTE: this is unclear what is meant by the specified date- is this the 18 day enrollment DASR?]** ~~will~~ may result in the customer being reverted to the electric utility default service and provide in the statement the length of the electric utility tariff minimum stay period if applicable.

The procedures outlined that reflect timing of operations must be fully reviewed. For example, in Section 412.240 (a)(5), the requirements for a RES to provide notice to customers for renewal by "a specified date" is unclear as to the intent of this date. Is it the proposed date for the contract renewal, the date for an enrollment with another RES, or the last date to drop RES supply altogether? These items should be carefully planned so that all parties are clear in their responsibilities and the effects on the other parties involved, especially customers.

CUB Comment:

Provide a statement in no smaller than 12 point font that ~~the customer must provide affirmative consent to accept the renewal offer and that establishing service with another electric supplier can take up to 45 days, and~~ failure to renew their existing contract or switch to another RES by the specified date will result in the customer being reverted to the electric utility default service and provide in the statement the length of the electric utility tariff minimum stay period if applicable.

October 27, 2009

Comment: Why are we trying to scare consumers from switching? Isn't the point of competition to actually have competition and encourage switching?

b) Automatic Renewal

The RES shall clearly disclose any renewal terms in their contract including any cancellation procedure. For contracts with an initial term of six months or greater, the RES shall send a notice of contract renewal separate from the bill at least 45 days prior to the end of the initial contract term but no more than 90 days in advance of such date. Nothing in this section shall preclude a RES from offering a new contract to the customer at any other time during the contract period. The separate written notice of contract renewal shall include:

AG Comment:

AG Recommends deleting the entire Automatic Renewal Section with the following as a comment: "These timeframes are different than the automatic renewal act – 815 ILCS 601. It has 30-60 day windows."

MidAmerican Comment:

b) Automatic Renewal

The RES shall clearly disclose any renewal terms in their contract including any cancellation procedure. For contracts with an initial term of six months or greater, the RES shall send a notice of contract renewal separate from the bill at least 30 days prior to the end of the initial contract term but no more than 90 days in advance of such date. Nothing in this section shall preclude a RES from offering a new contract to the customer at any other time

Comment [arm12]: . In MidAmerican's experience, percent off tariff/guaranteed savings products are the most popular product for this type of customer. Since the utility rate from year to year is not established at least 45 days out, this severely hampers a RES from renewing the customer on the same product they initially enrolled. The 30 day notification still gives the customer 20 days to enroll with another supplier. Keeping this notification at 30 days helps keep a popular product in the market.

October 27, 2009

- 1) A statement printed or visible from the outside of the envelope or in the subject line of the email (if customer has agreed to receive official documents by e-mail) that states, "Contract Renewal Notice;"
- 2) The date service under the new term will begin;

Liberty Power Comment:

- 2) The ~~date service~~ bill cycle under in which the new term will begin;
- 3) A statement in bold lettering no smaller than 12 point font that the contract will automatically renew unless the customer cancels it including the information needed to cancel;
- 4) If the new contract term includes a termination fee, a statement that the customer has from the date of the contract renewal notice through the end of the existing contract term to notify the RES of their rejection of the new contract term to avoid incurring a termination fee under the new contract term;
- 5) Clearly disclose the contract terms including a full description of any renewal offers available to the customer;
- 6) A statement in bold lettering no smaller than 12 point font that establishing service with another electric supplier can take up to 45 days, and failure to renew their existing contract or switch to another RES by the specified date will result in the customer being

October 27, 2009

reverted to the electric utility default service and provide in the statement the length of the electric utility tariff minimum stay period if applicable.

ComEd Comment:

- 6) A statement in bold lettering no smaller than 12 point font that establishing service with another electric supplier can take up to 45 days, and failure to renew their existing contract or switch to another RES by the specified date **[NOTE: unclear as noted in 412.240 (a)(5)]** will result in the customer being reverted to the electric utility default service and provide in the statement the length of the electric utility tariff minimum stay period if applicable.

Section 412.250 Assignment

If a RES is exiting the Illinois retail electric market, surrendering or otherwise cancelling its certificate of service authority, or no longer seeking to serve certain classes of customers, the RES shall not assign the agreement to a different RES unless:

ComEd Comment:

If a RES is ~~exiting the Illinois retail electric market~~, surrendering or otherwise cancelling its certificate of service authority, or no longer seeking to serve certain classes of customers, the RES shall not assign the agreement ~~to a different RES~~ unless:

- a) The new supplier is a RES,

October 27, 2009

- b) The new RES is in compliance with all applicable requirements of the Commission and/or the electric utility to provide electric service.

ComEd Comment:

- b) The new RES is in compliance with all applicable requirements of the Commission and/or the electric utility to provide electric service.
- c) The rates, terms, and conditions of the agreement being assigned do not change during the remainder of the time period covered by the agreement; provided however, the assigned agreement may be modified during the term of the agreement if the new RES and the retail customer mutually agree to such changes or revisions of the agreement after assignment of the agreement;
- d) The customer is given fifteen (15) calendar days prior written notice of the assignment by the current RES; and
- e) Within thirty (30) days after the assignment, the new RES provides the customer with a toll-free phone number for billing questions, disputes, and complaints.

October 27, 2009

SUBPART D: DISPUTE RESOLUTION AND CUSTOMER COMPLAINT REPORTS

Section 412.300 Application of Subpart D

The provisions of this Subpart shall apply to retail electric suppliers serving or seeking to serve residential or small commercial customers.

AG Comments:

~~Section 412.300 Application of Subpart D~~

~~The provisions of this Subpart shall apply to retail electric suppliers serving or seeking to serve residential or small commercial customers.~~

Liberty Power Comments:

The provisions of this Subpart shall apply to retail electric suppliers in connection with the provision of service and marketing to ~~serving or seeking to serve~~ residential or small commercial customers.

Section 412.310 Required RES Information

- a) The RES shall provide the following to the Commission's Consumer Services Division (CSD):

- 1) A copy of its bill formats (if it bills customers directly rather than using electric utility consolidated billing);

October 27, 2009

AG Comment:

Section 412.3400 Required RES Information

a)The RES shall provide the following to the Commission's Consumer Services Division (CSD):

ComEd Comment:

1) A copy of its bill formats, including SBO billing formats and the formats of billing data that may be submitted to electric utilities when they present a bill to the customer on behalf of the RES~~(if it bills customers directly rather than using electric utility consolidated billing);~~

2) Standard customer contract;

3) Customer complaint and resolution procedures;

4) The name, telephone number and e-mail address of the company representative whom Commission employees may contact to resolve customer complaints and other matters.

ComEd Comment:

4) The name, telephone number and e-mail address of the company representative whom Commission employees may contact to resolve customer complaints and other matters;

October 27, 2009

ComEd Comment:

5) The employee and sales agent education plan, as required by Section 412.160.

- b) The supplier must file updated information within 10 business days after changes in any of the documents or information required to be filed by this section.

Section 412.320 Dispute Resolution

a) Complaint Handling

- 1) A residential or small commercial customer has the right to make a formal or informal complaint to the Commission, and a RES contract cannot impair this right. A RES shall not require a residential or small commercial customer as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties.

AG Comment:

Section 412.32~~10~~ Dispute Resolution

~~a) Complaint Handling~~

- ~~4)A residential or small commercial customer has the right to make a formal or informal complaint to the Commission, and a RES contract cannot impair this right. A RES shall not require a residential or small commercial customer as part of the terms of service to engage in alternative dispute resolution,~~

October 27, 2009

including requiring complaints to be submitted to arbitration or mediation by third parties.

CUB Comment:

This is essential. No agreement between a RES and a customer should be allowed to impair the right of a customer to file a complaint at the ICC, nor should any RES be allowed to require a customer to engage in alternative dispute resolution.

b) Complaints to RES

- 1) A customer or applicant for service may submit a complaint by mail, facsimile transmission, e-mail, or by telephone to a RES. The RES shall promptly investigate and advise the complainant of the results within 14 calendar days. If the RES does not respond to the customer's complaint in writing, the RES shall orally inform the customer of the ability to obtain the RES's response in writing upon request. A customer who is dissatisfied with the RES's review shall be informed of the right to file a complaint with the Commission and the Office of Attorney General.

AG Comment:

~~b) Complaints to RES~~

- ~~b) A customer or applicant for a product or service may submit a complaint by mail, facsimile transmission, e-mail, or by telephone to a RES. The RES shall promptly investigate and advise the complainant of the results in writing within 14 calendar days. If the RES does not respond to the customer's complaint in~~

October 27, 2009

~~writing, the RES shall orally inform the customer of the ability to obtain the RES's response in writing upon request.~~ A customer who is dissatisfied with the RES's review shall be informed of the right to file a complaint with the Commission and the Office of the Illinois Attorney General.

ComEd Comment:

b) Complaints to RES **[NOTE: this section may be best revised to break out the steps under various sub-bullets]**

1) A customer or applicant for service may submit a complaint by mail, facsimile transmission, e-mail, or by telephone to a RES. The RES shall promptly investigate and advise the complainant of the results within 14 calendar days. If the RES verbally does not responds to the customer's complaint ~~in writing~~, the RES shall ~~orally~~ inform the customer of the ability to obtain the RES's response in writing, upon request. A customer who is dissatisfied with the RES's ~~review~~ response shall be informed of the right to file a complaint with the Commission and the Office of Attorney General.

c) Complaints to the Commission.

1) Informal complaints.

A) If a complainant is dissatisfied with the results of a RES's complaint investigation, the RES shall inform the complainant of their ability to file a complaint with the Commission's CSD and provide contact information for the Commission's CSD. Complaints may be filed with the Commission's CSD by phone, via the internet, by fax or by

October 27, 2009

mail. Information required to process a customer complaint include:

AG Comment:

⇒ Complaints to the Commission.

1) Informal complaints:-

~~A) If a complainant is dissatisfied with the results of a RES's complaint investigation, the RES shall inform the complainant of their ability to file a complaint with the Commission's CSD and provide contact information for the Commission's CSD.~~ Complaints may be filed with the Commission's Consumer Services Division or "CSD", by phone, via the internet, by fax or by mail. Information required to process a customer complaint includes:

ComEd Comment:

A) If a complainant is dissatisfied with the results of a RES's complaint investigation, the RES shall inform the complainant of their ability to file a complaint with the Commission's CSD and provide contact information for the Commission's CSD. Complaints may be filed with the Commission's CSD by phone, via the internet, by fax or by U.S. mail. Information required to process a customer complaint include:

i) The customer's name, billing and service addresses, and telephone number;

October 27, 2009

ComEd Comment:

i) The customer's name, ~~billing~~ mailing and service addresses, and telephone number;

ii) The name of the RES;

iii) The customer account number;

MidAmerican Comment:

iii) The utility name

ComEd Comment:

iii) The customer's electric utility account number;

iv) An explanation of the facts relevant to the complaint;

v) The complainant's requested resolution; and

vi) Any documentation that supports the complaint, including copies of bills or terms of service documents.

B) The Commission's CSD may resolve a complaint via phone by completing a call between the customer, the CSD staff and the

October 27, 2009

supplier. If no resolution is reached by phone, and a dispute remains, an informal complaint may be sent to the RES. Three-way calling may not be available or CSD staff may determine a three-way call is not the best method to handle the customer's complaint in which case an informal complaint will be sent to the RES. In the case of the electric utility purchasing the RES's receivables, the RES shall notify the electric utility of any informal complaint received and the electric utility shall cancel disputed RES charges and remove those charges from the customer's bill.

ComEd Comment:

B) The Commission's CSD may resolve a complaint via phone by completing a three-way call between the customer, the CSD staff and the ~~supplier~~ RES. If no resolution is reached by phone, and a dispute remains, an informal complaint may be sent to the RES. ~~Three-way calling may not be available or CSD staff may determine a three-way call is not the best method to handle the customer's complaint in which case an informal complaint will be sent to the RES. In the case of the electric utility purchasing the RES's receivables, the RES shall notify the electric utility of any informal complaint received and the electric utility shall cancel disputed RES charges and remove those charges from the customer's bill.~~ In the case of the electric utility purchasing the RES's receivables or presenting a bill on the RESs behalf, the RES shall notify the electric utility of any informal complaint received and the electric utility shall cancel disputed RES charges and remove those charges from the customer's bill.

ICEA Comment:

October 27, 2009

ICEA proposed text:

“ . . . In the case of the electric utility purchasing the RES's receivables or utility consolidated billing, the RES shall notify the electric utility of any informal complaint received and the electric utility shall follow the procedures outlined in their billing service agreement with the RES to withhold collection activity on disputed RES charges on the customer's bill.”

Comment:

The proposed language more accurately describes existing and proposed practice. As ICEA understands Ameren's existing process, Ameren leaves disputed charges on the bill but does not pursue collection. As ICEA understands ComEd's proposed process, ComEd will remove the charges from the bill but the RES can place a comment in the bill that the amount is disputed. ICEA has concerns with removing disputed charges from the bill while the dispute is pending. Such a practice could lead customers to thinking that the dispute is resolved.

ICEA Comment:

Section 412.320(c)(1)(A) and (B): Some readers may not know the abbreviation “CSD”. Accordingly, it may be more informative to use “Consumer Services Division” rather than “CSD” in Section 412.320(c)(1)(A) and (B).

October 27, 2009

- C) The RES shall investigate all informal complaints and advise the Commission in writing of the results of the investigation within 14 days after the complaint is forwarded to the RES.

ComEd Comment:

- C) The RES shall investigate all informal complaints and advise the ~~CSD~~Commission in writing of the results of the investigation within 14 days after the complaint is forwarded to the RES. **[NOTE: Not “informal” if it goes to the Commission.]**

- D) The Commission shall review the complaint information and the RES’s response and notify the complainant of the results of the Commission’s investigation.

ComEd Comment:

- D) The ~~CSD~~Commission shall review the complaint information and the RES’s response and notify the complainant of the results of the Commission’s investigation.

- E) While an informal complaint process is pending:
 - 1) The RES (or the electric utility in the case of the electric utility having purchased the RES’s receivables) shall not initiate collection activities for any disputed portion of the bill until the Commission has taken final action on the complaint.

October 27, 2009

- 2) A customer shall be obligated to pay any undisputed portion of the bill and the RES (or the electric utility in the case of the electric utility purchasing the RES's receivables) may pursue collection activity for nonpayment of the undisputed portion after appropriate notice.

ComEd Comment:

- 2) A customer shall be obligated to pay any undisputed portion of the bill and the RES (or the electric utility in the case of the electric utility purchasing the RES's receivables or the utility presenting a RES's charges on a consolidated bill) may pursue collection activity for nonpayment of the undisputed portion after appropriate notice.

- F) The RES shall keep a record for two years after closure by the Commission of all informal complaints forwarded to it by the Commission. This record shall show the name and address of the complainant, the date, nature and adjustment or disposition of the complaint.

ComEd Comment:

The RES shall keep a record for two years after closure by the ~~CSD~~Commission of all informal complaint ~~results forwarded to it by the Commission~~. This record shall show the name and address of the complainant, the date, nature and adjustment or disposition of the complaint.

October 27, 2009

2) Formal complaints.

If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the Commission.

AG Comment:

2) Formal complaints:-

ComEd Comment:

~~If the complainant is not satisfied with the results of~~ Subsequent to the informal complaint process, ~~the a~~ complainant may file a formal complaint with the Commission.

[NOTE: should this section refer to the formal complaints in the PUA under section 220 ILCS 5/10-101?]

3) Disclosure of RESs' level of customer complaints

The Commission shall, on at least a quarterly basis, prepare a summary of all formal and informal complaints received and publish it on its web site.

The summary shall be in an easy-to-read and user friendly format.

Section 412.330 Uniform Disclosure Requirements

In addition to providing the customer with a copy of the sales contract, a RES must disclose the following information to the customer prior to any enrollment for electric service, regardless of the form of marketing used. The written Uniform Disclosure statement must use a font of 12 point or larger and, if a separate document must not exceed two pages in length:

October 27, 2009

AG Comment:

In addition to providing the customer with a copy of the sales contract, a RES must ~~disclose~~ provide and review with each customer a the following information to the customer prior to any enrollment for electric service, regardless of the form of marketing used. The written Uniform Disclosure statement Statement. The Uniform Disclosure Statement is must be a written document in- must use a font of 12 point or larger font and, if a separate document ~~must~~ not to exceed two pages in length:

MidAmerican Comment:

In addition to providing the customer with a copy of the sales contract, a RES must disclose the following information to the customer prior to any enrollment for electric service, regardless of the form of marketing used. The written Uniform Disclosure statement must use a font of 12 point or larger and, if a separate document must not exceed two pages in length and must include:

- a) The legal name of the RES;

AG Comment:

- a) The legal name of the RES; and the name under which the RES will market its products, if different;

October 27, 2009

- b) The RES's business address;

AG Comment:

- b) The Uniform Disclosure Statement can be part of the first page of the sales contract, included in the Letter of Authorization, or a separate document.

- c) The RES's toll free telephone number for billing questions, disputes, and complaints;

AG Comment:

- c) The RES's toll free telephone number for billing questions, disputes, and complaints and hours of operation;
- d) The charges for the service for the length of the contract: if any charges are variable during the term of the contract, an explanation of how the variable charges are determined;

CUB Comment:

- d) The charges for the service for the length of the contract on a price per kWh basis: if any charges are variable during the term of the contract, an explanation of how the variable charges are determined;

October 27, 2009

AG Comments:

The name of the electric service offering for which the customer is being solicited, and an explanation of how the service will be priced – fixed price, fixed monthly charge, variable price, indexed price etc.:

- e) The length of the agreement including the automatic renewal clause, if any;

AG Comment:

- e) 5) The length of the agreement in years and months, including specific mention of any the automatic renewal clause, if any;
- f) The presence or absence of early termination fees or penalties, and applicable amounts or the formula pursuant to which they are calculated;
- g) Any requirement to pay a deposit for power and energy service, the estimated amount of the deposit or basis on which it is calculated, when the deposit will be returned, and if the deposit will accrue interest;

AG Comment:

October 27, 2009

- g) Any deposit requirements, including to pay a deposit for power and energy service, the estimated amount of the deposit or basis on which it is calculated, when the deposit will be returned, and if the deposit will accrue interest;

CUB Comment:

(this would seem to conflict with Section 412.220 that prohibits a RES from collecting a deposit if RES is selling the receivable to the utility.)

Liberty Power Comment:

- g) Any requirement to pay a deposit for power and energy service, and the estimated amount of the deposit or basis on which it is calculated, ~~when the deposit will be returned, and if the deposit will accrue interest;~~

- h) Any fees assessed by the RES to the applicant for switching to the RES;

AG Comment:

- h) Any fees assessed by the RES to the customer applicant for accepting the product or service, including any fees associated with change the customer's electric supply service; switching to the RES;

MidAmerican Comment:

- h) Any fees assessed by the RES to the applicant for switching to ~~the or from~~ a RES;

Comment [arm13]: This statement protects the customer from a RES who could charge a close-out or termination fee (not necessarily an early termination fee) whenever a customer selected another supplier or to return to utility service, even after the initial contract has expired.

October 27, 2009

- i) The name of the electric service offering for which the customer is being solicited;

AG Comment:

~~i) The name of the electric service offering for which the customer is being solicited;~~

- j) A statement that the customer may rescind the agreement within ten calendar days of the electric utility processing the enrollment request by calling either the RES or the electric utility and provide both phone numbers;

AG Comment:

- j) A statement that the customer may rescind the agreement within ten calendar days of the electric utility processing the enrollment request by calling either the RES or the electric utility, including the telephone numbers and website addresses where the rescission can be made; ~~and provide both phone numbers;~~

- k) A statement that the RES is an independent seller of power and energy service and that the RES is not representing or acting on behalf of the electric utility, governmental bodies, or consumer groups;

AG Comment:

October 27, 2009

- k) A statement that the RES is an independent seller of electric power and energy service, and that the RES is not representing or acting on behalf of the electric utility, governmental bodies, or consumer groups;
- l) A statement that the electric utility remains responsible for the delivery of power and energy to the customer's premise and will continue to respond to any service calls and emergencies;

ComEd Comment:

l) A statement that the electric utility remains responsible for the delivery of power and energy to the customer's premise and will continue to respond to any service calls and emergencies and that switching suppliers will not impact their electric service reliability;

MidAmerican Comment:

- l) A statement that the electric utility remains responsible for the delivery of power and energy to the customer's premises and will continue to respond to any service calls and emergencies;
- m) A statement that the customer will receive written notification from the electric utility confirming a switch of the customer's power and energy supplier;
- n) If savings are guaranteed under certain circumstances, the RES must provide a written statement which includes a plain language description of the conditions that must be present in order for the savings to occur; and

October 27, 2009

ICEA Comment:

Comment:

In a telemarketing or in-bound enrollment call, when must the written statement be provided?

- o) If a product is being offered at a fixed monthly charge that does not change with the customer's usage and the fixed monthly charge does not include delivery service charges, it shall be disclosed to the customer that the fixed monthly charge is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the fixed monthly charge is not the total monthly amount for electric service.

AG Comment:

- o) A statement that If a product is being offered at a fixed monthly charge that does not change with the customer's usage and the fixed monthly charge does not include delivery service charges, it shall be disclosed to the customer that the fixed monthly charge is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the fixed monthly charge is not the total products or services purchased do not include electric delivery service, including any applicable taxes and fees, and therefore any price estimates do not reflect the total monthly amount for electric service.

CUB Comment:

October 27, 2009

~~o) If a product is being offered at a fixed monthly charge that does not change with the customer's usage and the fixed monthly charge does not include delivery service charges, it shall be disclosed to the customer that the fixed monthly charge is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the fixed monthly charge is not the total monthly amount for electric service.~~

MidAmerican Comment:

o) If a product is being offered at a fixed monthly charge that does not change with the customer's usage and the fixed monthly charge does not include delivery service charges, ~~it shall be disclosed~~ the RES must provide a statement to the customer that the fixed monthly charge is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the fixed monthly charge is not the total monthly amount for electric service.

Liberty Power Comment:

1. Placement of Subsection

This subsection currently seems to be out of place in Subpart D (Dispute Resolution and Customer Complaint Reports). Liberty Power believes it is more appropriate to include this in Subpart B (Marketing Practices)

2. Deposit Details

Liberty Power believes the Uniform Disclosure Statement should disclose the most pertinent information to the customer and should otherwise be kept to a minimum to reduce the time it takes to complete a transaction, which increases customer satisfaction. This is of particular

October 27, 2009

importance when using TPVs. While a requirement to pay a deposit is highly relevant to the customer, the specifics behind the deposit (which are contained in the terms of service) are secondary and not nearly as important as other items within the Uniform Disclosure Statement. For the reasons stated above, Liberty Power recommends Section 412.330(g) be modified as follows:

Any requirement to pay a deposit for power and energy service, and the estimated amount of the deposit or basis on which it is calculated, ~~when the deposit will be returned, and if the deposit will accrue interest;~~

3. Arrangement of Items

In order to carry-out revisions proposed by Liberty Power in regards to what items should be required in the TPV, Liberty Power has re-ordered the individually lettered items. The revised order can be reviewed in detail in "Appendix A". The substantive change (as discussed earlier) is item (k) has now become item (o), and when combined with previously suggested modifications⁴, would not be included in the TPV. Again, in accordance with Section 412.120(c) (and similar sections that apply to other forms of marketing), a RES sales agent already must disclose "that the RES is an independent seller of power and energy service and that the RES is not representing or acting on behalf of the electric utility. It is overly duplicative to require the TPV to once again make this statement.